App. F. IX-4

Previous References

193 9-30
Law

File No. 43-25
Serial Nos. 1.2.3.4

Later References
Law 122-33-142

General and Revenue Secretariat.

Serial Nos. Three

Part B for Aug 1931

SUBJECT.

Criminal appeal filed by one D. Lin
Nowa Khan in Sindh High Court
in the High Court. Printing of Fin
Records in the Govt Press

To the Dy Supreme
Adv 20708 15.10.29
No. 187-1884-6/Law

Secretariat | Land File No. 43 of 1929

Serial No.	
	Letter No: 27 dated: 7.11.29 from post Addl case suggesting that Mr. AR. Rajeswara Iyer may be appointed to Conduct the Criminal appeal filed by Sitaramachar in the Sawdal civil case

L.R.'s note:

"The accused has taken time till the 30th inst. in the Sessions Ct. to file an appln. The G.A. himself says that Mr. R.R. Iyer has to conduct the appeal (vide A), there is no difficulty in the matter.

If approved, a Cy. of this will be issued and Mrs. R. Iyer will be instructed to appear for govt. in the appeal & conduct the case

3rd member. SD PM. 28/9

"Yes. also in connection with the Transfer appn" SD RM. 28/

Draft order Subd

3rd member. SD PM. 28/9

SD R.M. 28/9.

Issue SD P.M. 28/9

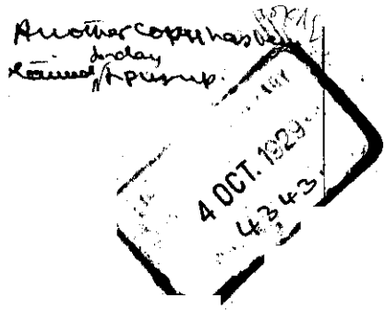
NO.

Pl-Cert: 7784

DS 30 4-4

Certified true copy

Financial Secr: has not seen draft from Duke.



1) The Govt Advocate
2) Mr V.A.R. Navaratnam
3) Comptroller to Govt
P/1880-6.04 28.28.29

4 Regarding Mr A.R. Navaratnam's case.

Letter No 4/1.133.29.30 dated 4 from the Dr req, explaining the appeal memo in the case of A. Veerasekera that arrangements

DR's order in the D

arrangements were informing the Dr to

Draft to Dr map putting

Mop
11/1

J. Stuart
P. 11/10

Mo

General and Revenue Secretariat

Land File No. 43 of 1929

Serial No.	
4	To the Dt Magistrate Nellore P 2070 (1) Dt 15-10-29 forwarding copy of Govt P 1881. 61. Land 43-29-2 of 28-9-29
	Memo No 349 Dt 4th Nov from the Govt. forwarding copies of G.O No 2107 addressed by them to the A.R. Nageswara Iyer intimating that the case is posted to 15-11-29.
	Further reports are awaited

2043 4

General and Revenue Secretariat. Law File No. 43 of 1929 App. F. III—2]

Serial No.

No C 10291 of 2/6.11.29

From

The I. G. of Police

Forwards with the recommendation for sanction communication received from the Surety Bangalore city, requesting that the records connected with the Sandal oil adulteration case may be sold limited at cost cost.

Noted with a draft as directed The I. G. does not say whether the records will be printed in the Govt Press or any other private Press and then is no estimate of cost.

Bruce 8/11 A. | The expenditure has perhaps to be debited Wtr-Ended Sandal oil Factory

ADC 8/11

The Govt Sett has to be consulted re

Secy)

There are more than 1000 exhibits in this case, and I think it is absolutely necessary to get all the records printed as proposed by the I. G. P. The expenditure is unavoidable.

4637 14/11

NOTE—Contn. sheet.

WD 066—GPB—30,000—26-7-29

General and Revenue Secretariat.

Laws File No. 43 of 1929.

App. F. III—2]

Serial No.

Hurling with the Lake & what was it cost? Kindly cost the matter.

by
14/11/29

I had a talk with Mr Craig & Hyam & he says that it may take more than a month from now & that it is absolutely necessary to get them printed.

I have requested him to consult the Chief Engineer as to the printing.

I think the cost has to be met by the Local Branch.

2nd Member
16/11/29

D. 14.11.29
M
16/11

Chairman's 16/11/29
comments

Draft attached
M
18/11

D. 16.11.29
M
18/11

I agree
M
18/11

To Mr. Engineer
2707 of 19.11.29

Kindly note that Mr Nageswara has been requested to consult him in the matter & that he may kindly advise

NOTE—Contn. sheet.

WD 066—GPB—30,0C

what can Mr Nageswara do.

Sub A
M
21/11/29

General and Revenue Secretariat. | Law File No. 43 of 1929.

Serial No.

6

P. Kahalekar, Esq. B.A.B.L.
Law Secretary
Bangalore.

Dear Sir,

The talk we had

Draft put up
DM
26.11.
J Bruce
P 26/11

To the Superintendant, Govt Press.
P2856/Law dated 26-11-29
requesting him to get the records printed
by the 10th Dec.r—

P2857/copy to Dgp.

NOTE—Contn. sheet.

Govt DM 29.11.29

WD 066—GPB—30,000—26-7-29

2093

App. F. III—2]

General and Revenue Secretariat.

Law File No. 43 of 1929.

Serial No.

Draft to Mr A.R.N. Dyer for perusal
DMF
27.11.29

Jayewardene
P.W.

To,
A. R. Nagewara Rao, B.A. B.L.
Advocate
P 2910 / 28.11.29
intimating him that his request
Press has been addressed to get the
records printed by the 10th Dec

Letter dated 28 Nov from Mr A.R.N. Dyer
enquiring whether he can represent
to the Ct that Govt are desirous of getting
the record printed and that Govt Press
will do the work without delay -
Please send a reply
SD Asst. 28/11

Draft reply for perusal
DMF
28.11.29

Issued 29/11/29

Letter submitted to the Member for perusal.
P.W.
28/11

5182
29/11

3rd Member)

28/11

29/11/29

NOTE—Contn. sheet.

WD 066—GPB—30,000—26-7-29

General and Revenue Secretariat.

Land File No. 43 of 1929

Serial No.

Draft ... [illegible] ...

Dog
3/12.

Issue today
D. M.
3/12
W. 3/12

To, The Inspector General of Police
P 2963 dated 3.12.29
requesting him to depute an Officer to assist our Police in this case
Copy to Superintendent P 2964.

Draft R/ to Supdt. Pr: Reshuteah
Trenders

DMC
13/12

J. S. M.
D. M.
13/12
W. 13.12.

No P 3127 of 13/12/29

Do letter no 1904 dated 16.11.29 from the Superintendent intimating that the first set of records sent by the Chief of being compared and if there is to be a record batch still to be received it would be impossible to get it ready within the time required

NOTE—Contn. sheet.

WD 066—GPB—30,000—26-7-29

2849 7

App. F. 111—21

Secretariat. | File N 45 of 1929.

Serial No.

C.R.S. orders on the P.V.D.
"Please ascertain the point at
SB PM. 16.12.29
Draft to me Nageswara Iyer for futu[illegible] answer
Dorp
16/12
16/1

To

A.R. Nageswara Iyer, Esq. B.A. (Hons.),
Advocate, Bangalore City.
No. P. 3195 dt 17.12.29.
Requests him to enquire in the Chief Court
and send a report regarding the further batch
of record referred to in para 2 of the Supt's le

Letter Dated 16th Dec. from the Advocate Gen.
Decor

NOTE—Contn. sheet.

WD 066—GPB—80,000—26-7-29

Bangalore City 19th Dec 192

[redacted]yya, Esq., B.A.B.L..
Law Secretary to Government, Bangalore.

Dear Sir

Re: Samual Oil case in the Chief Court of Mysore, Bangalore.

The Coutts sheets and their statements of accounts, and the copies of the reports of the Deputy Comptroller and Messrs. A. Parthasarathi are wanted for reference. I request you to be good enough to arrange to send them to me immediately and oblige.

Yours sincerely.

WD 01684—GPB—30,000—20-4-29

A. R. NAGESVARA IYER, B.A., B.L.,
ADVOCATE.
ಎ. ಆರ್. ನಾಗೇಶ್ವರ ಐಯ್ಯರ್, ಬಿ.ಎ., ಬಿ.ಎಲ್.,
ಅಡ್ವೊಕೇಟ್,
ಚಿಕ್ಕಪೇಟೆ, ಬೆಂಗಳೂರು ಸಿಟಿ.

CHICKPET.

Bangalore City 19th Dec 192

To

The Secretary to the Government of Mysor
Law Department, Bangalore.

Dear Sir,

With reference to your D.O.No. P 3195
dated 16/17 - 12 - 29, all/the records of the Sand Wood Oil case, except the exhibits in the case have been sent to the Superintendent, Government Press. The other batch will be sent to the Superintendent in a couple of days. He may there fore be requested to complete the printing of all the records already sent by the end of this month, and the other batch before the first week of January. As the exhibits are very important I request that a special request may be made to the Superintendent to finish the printing of the

Letter no nil dated 3

Mr. Raghavan Iyer Advocate stating
he received the record which were with
Dist. Regr of Mysore on Wednesday last
has passed up q[ts] 1 to 4 [cts] for inspect
documents which are with the Dist Judge

Mr. Raghavan Iyer states, that
been to Mysore to inspect the documen
in Connection with the Civil S.
it was ascertained to him that some
important documents are in the Court
the Dist. Judge, He requests to addres
Judge to make arrangements fo
inspection of documents on q[ts] 1 to 4 Jan

for orders

TSD
6/1.

Any receipt is to be ac
the Jamdar of the Court who was
have here Also examine handso
have kept a copy of the H. Civ Jud
also for reference in the file.

In reply please refer to
No. A...Dy...27

Tel. Address:
"JURIST," Bangalore

OFFICE OF THE GOVERNMENT ADVOCATE
IN MYSORE,

Bangalore..27th..Sept...1929

Law 43-29-1

Dear Mr. Mahadevayya.

Re: SANDAL OIL CASE.

I write to inform you that I have just received copy of an application presented on behalf of Seetharamachar to the Chief Court praying that Criminal Appeal No. 55 of 1929-30 on the file of the Sessions Ju Mysore, may be transferred to the Chief Court for disposal. I am enclosing herewith a copy of the same f your information and also forwarding to the District Magistrate, Mysore, another copy for favour of remarks and instructions. Since Mr. A. R. Nageswara Iyer ha to conduct the appeal on behalf of Government, the - Transfer application may also be entrusted to him. B if Government have any other course to suggest, I req I may be kindly informed of the same immediately.

Yours sincerely,
G. Ramachandra Rao

The accused has taken time till the 30 in the Sessions Court to file a memorandum a The G. A. himself says that Mr. A. R. has to contest the appeal (vide A), th is no difficulty in the matter as G.O. will be issued

If approved, Mr. A. Iyer will be instructed to appear in the appeal & conduct the case

D. M. 27

P. Mahadevayya, Esq., B.A., B.L.,
Secretary to Government, Law Department,
Bangalore.

3rd Member
Yes; ask in connection with Transfer application
27/9/29

IN THE CHIEF COURT OF MYSORE, BANGALORE.

Criminal Transfer Petn. No. /29-30.

Sitharamachar,
Mysore Jail,
Mysore. ... Petitioner.

VERSUS.

The Government of Mysore. ... Opponent.

UNDER SECTION ~~526~~ 526 OF THE CODE OF CRIMINAL PROCEDURE.

The petitioner abovenamed begs to submit as follows:-

1. For an alleged offence of Criminal Breach of Trust as an Agent, under section 409, I. P. C. the petitioner has been convicted and sentenced to 2 years' R.I. and Rs.1,000/- fine by the Additional District Magistrate of Mysore. in Criminal Case No. 1 of 1928-29 on his file.

2. The petitioner has preferred an appeal against the said conviction and sentence to the Court of the District and Sessions Judge, Mysore in Cri. A. No. 55 of 29-30 and the said appeal has been posted to the 30th instant to enable the petitioner in the interval to apply to this Hon'ble Court for a transfer of the appeal from the file of the District and Sessions Judge's Court, Mysore.

3. The offence is said to have been committed by the petitioner not in his individual capacity, but as the Managing Director of the Essenflour Products, Ltd., not for his personal benefit, but for the benefit of the companies under his management

4. The Agreement P14. between the Government of Mysore and the Essenflour Products, Ltd., was drafted in consultation with the then Government Advocate. (Vide. P7 in the case). PW. Mr. B. K. Garudachar has testified to the then Government Advocate having been present in his - private professional capacity at one of the meetings of - Essenflour Co., as legal adviser on behalf of some persons interested in the affairs of the said company. The then - Government Advocate is now the presiding Judge at the District and Sessions Court, Mysore.

5. The petitioner is given to understand that before the prosecution was launched, the then Government Advocate was consulted and his opinion obtained by the authorities - responsible for the initiation of the proceedings. The - learned District and Sessions Judge, Mysore has in his order on the petitioner's bail application expressed his views strongly against the petitioner.

6. The petitioner is advised to submit that there are several questions of law of unusual difficulty for decision in the case namely:-

(a) the legal relation between the Government of Mysore and the Essenflour Products, Ltd.,

(b) the legal relation between the Government of Mysore and the Managing Director of the Essenflour Products, Ltd.,

(c) the legal relation between PW 19. Mr. K. B. Mavlankar and the Essenflour Products. Ltd., and also that - between PW 19 and the Government of Mysore

[illegible] and the course of - business dealings between the Government of Mysore and the Essenflour

Essenflour Products, Ltd., for purposes of determining the exact nature of liability if any, of the petitioner to the Government of Mysore.

Under these circumstances, the petitioner respectfully prays that in the interests of Justice, this Hon'ble Court may be pleased to transfer the appeal to its file and decide it itself.

The petitioner has submitted herewith the affidavit - required in accordance with law.

Copies of the Transfer Petition and the affidavit have been given to the Government Advocate and voucher therefor - produced herewith.

Bangalore City,
Dated 27th Sept.1929.

True Copy.
Id/- M.K.
Advocate for Petitioner.

IN THE CHIEF COURT OF MYSORE, BANGALORE.

Criminal Petition No. /29-30.

Petitioner.
B. SITHARAMACHAR.

VS.

Opponent.
THE GOVERNMENT OF MYSORE.

A F F I D A V I T.

I, B.K. Muthry. aged years son of Mr. P. Bhima Rao, ("Sundara Vilas"), Lakshmipuram) Mysore do hereby - state on oath as follows:-

The appellant in the case is my Father-in-law. - He has appealed to the District and Sessions Judge, Mysore in Cr. A. 88/29-30 against the conviction and sentence - passed on him in Cr. Case No. 1/28-29 on the file of the - Additional District Magistrate's Court, Mysore. I am - acquainted with the nature of the evidence on record in - the case to the effect that (1) the agreement P14 dated - 4th June 1925 was drafted in consultation with the then Government Advocate, the present District and Sessions Judge, Mysore.

(ii) In the year 1928, the then Government Advocate, the present District and Sessions Judge, Mysore, happened be present in his professional capacity on behalf of - one of the parties concerned in the Essenflour Products, Ltd., at one of the meetings held for a discussion of the fairs relating to the said company. The terms of Ex.P14 the agreement between the Government of Mysore and the Essenflour Products, Ltd., have come in for a large comment in the case.

In the orders passed by the learned Sessions Judge, Mysore, on the application of Mr. Sitharamachar for bail, during the trial before the Additional District Magistrate, the learned Sessions Judge has expressed his views in decisive terms against the contention on behalf of the accused, especially regarding the private correspondence - between Mr. Seetharamachar and Mr. Mavlankar. Relied in the case. The said correspondence forms one of the most important pieces of evidence in the case.

I enquired and learn that before the present prosecution was started, the then Government Advocate - the present - District and Sessions Judge, was consulted and his opinion obtained by the authorities concerned. I am also given to understand that there are several question of law of unusual difficulty arising for solution in the case. In the ends of Justice, I pray for a transfer of the appeal from the - District and Sessions Judge to the Hon'ble the Chief Court of Mysore, for final disposal.

Law 43-29-2 Proceedings of the Government of His Highness the Maharaja of Mysore.

Read--

Letter No.27 dated 27th September 1929 from the Government Advocate in Mysore forwarding copy of the application presented before the Chief Court on behalf of Seetharamachar praying for the transfer of the Criminal Appeal No.55 of 29-30 from the file of the Sessions Judge, Mysore, to that of the Chief Court for disposal and recommending that Mr. A.R.Nageswara Iyer, Advocate may be entrusted with the conduct of the case before the Chief Court.

O R D E R No. P.1884-6/8 28/9/29

Dated, Bangalore,

Sanctioned. Mr. A.R.Nageswara Iy is requested to appear on behalf of Gover ment in the Transfer application before t Chief Court as well as in the Criminal appeal filed by Seetharamachar wherever t same be heard and decided.

Secretary to Government,
Law Department.

To 1004/2891

✓ TheGovernment Advocate.
✓ Mr. A.R.Nageswara Iyer.
Comptroller through Financial Sectt.

C 47

-733/29-30.

Office of the Deputy Commissioner,
& District Magistrate,
Mysore District.

Dated Mysore, 4th October *192* 9.

FROM

K. V. ANANTARAMAN, ESQ., B.A., U 3
District Magistrate,
Mysore District.

To

P.Mahadevayya, Esq., B.A., B.L.,
Secretary to the Government of
His Highness the Maharaja of Mysore,
(Law Department), Bangalore.

SIR,

I have the honour to forward herewith for your information a copy of the grounds of appeal received from the Public Prosecutor Mysore Division, in Criminal Appeal No. 55/29-30 on the file of the Sessions Judge, Mysore Division, (B.Sitaramachar Vs. Governme of Mysore) and to request that you will kindly arrange for the conduct of the case in Appeal.

ments already
in D. maybe
of ch
D 8/10
Law 11/10

I have the honour to be,
Sir,
Your most obedient servant,

K. V. Anantharaman

District Magistrate,
Mysore District.

IN THE COURT OF THE DISTRICT AND SESSIONS JUD

M Y S O R E.

Cr. Appeal No.55/29-30.

APPEAL GROUNDS.

1. The decision and sentence passed by the Lowe Court are opposed to Law, evidence and the probabil of the case.

2. The Lower Court entirely pre-judged the case as is evident even from the very first paragraph of the judgment.

3. In giving 'Brief outlines of the fraud' the Learned Magistrate has drawn too much on his own imagination not based on legal evidence.

4. The Lower Court erred in admitting evidence of transactions extending over a period of six years, entire period of transactions and thus succumbing to the mischief which it is the scheme of the Criminal Procedure Code to avoid.

The Lower Court erred in relying upon the accounts of Mr. Ravishankar which have not been proved, and which which have been proved to be false, defective and inaccurate.

The account given by the Lower Court of what Mr. Sitaramachar did in London is defective, misleading and inaccurate.

The Lower Court in dealing with the relationship

relationship between the Mysoreflour Products,Ltd., and other concerns like the Mysore Asbestos Products, Co., Ltd., and The Mysore Developme Syndicate, etc., was proceeding on lines both inaccurate and irrelevant.

The Lower Court failed to understand th terms of the Agreement Ex.P.14 and their legal consequences.

9. The Lower Court further misunderstood Law relating to Implied Agency and importing into the first period of the transaction terms that are based on no legal evidence.

10. The finding of the Lower Court that Mr. Ayiangar is not a Sub-Agent but only a Foreign Correspondent is opposed to the evidence and case of the prosecution and the Lower Court was only making a new case for the Prosecution.

11. The correspondence relating to the banking arrangements in London clearly prove the honesty and good faith of Mr.Sitaramaiah

12. In dealing with the question as to what is the legal relationship created by the Agreement Ex.P.14 between Mysoreflour Products, Ltd., and the Mysore Government, the Learned Magistrate failed to understand the real effect of the terms and of the Rulings cited before him.

13. The Lower Court introduces a theory of Before Agency in the transaction when it is not warranted by the facts.

14. Under caption "Entrustment of the sale

ntrustment of the sale Proceeds" the Lower
urt entirely misunderstood the effect of
ause 6 of the Ex.P.14.

The Learned Magistrate has misapplied section 115 of the Evidence Act and also resor to a doctrine of double estoppel.

6. In addition, [illegible] the question of weekly remittances the Learned Magistrate entirely missed the real point raised by the defence.

17. The Lower Court has failed to know the real reason why there was a condition in the Agreement about the maintainence of accounts.

18. There is absolutely no evidence on which the Learned Magistrate bases his findings that there was some improper arrangement between R.Sitaramachar and R.Devlankar in respect of drafts.

19. Exhibit P.709 has not at all been proved in accordance with Law. The Lower Court erred in acting upon Ex.P.709 as a genuine document.

20. Even according to the conditions laid down in Ex.P.709 R.Devlankar can draw on the Sandal Oil money for meeting drafts only under legitimate circumstances and if the Lower Court had only read Ex.P.709 with the evidence on oath given by Devlankar himself the Lower Court should have acquitted R.Sitaramachar of all improper complicity with Devlankar.

21. The Lower Court had absolutely no Jurisdiction to try this case in any view of the matter.

22. The Learned Magistrate entirely misunderstood the facts relating to Trust and Breach thereof and assumes jurisdiction on such misunderstanding.

23. It is not for the trying Court that commits irregularity with consciousness of it to declare that it is a curable irregularity.

24. It is beyond doubt that the accused has been materially prejudiced by the trial of the case in a wrong Court.

25. The charge framed against the accused was vague and indifinite.

26. The use of the phrase "In any manner" in the charge itself is illegal.

The charge ought to state in what manner the property was entrusted to the accused and not to borrow the generic phrase used in the section of the code.

27. The Lower Court failed to see that the accused was in no view an Agent of the Mysore Government. The Lower Court entirely misunderstood the Rulings cited before him on this question.

28. The Lower Court entirely ignored that portion of the Prosecution case and evidence wherein it was clearly made out that Mr. Navlankar was appointed as the Sole Selling Agent in Europe and that the Director was made aware of the same and held direct correspondence with Mr. Navlankar, that the Sandal Oil was directly consigned to Mr. Navlankar, that all sales were effected, bills accepted and cash received and dealt with by

29. The Lower Court builds up a new case for the Prosecution on the question of entrustment.

30. In spite of what the Magistrate has said question of entrustment it leads him not to a case of entrustment to the accused but to the accused having dominion over the sale proceeds in the hands and within the control of Mr. Mavlankar. The charge against the accused involves one of direct entrustment and not a case of having dominion over property.

31. The figures given under the head "Misappropriation of Sandal Oil collections" are incorrect and based on wrong basis.

32. There is absolutely no evidence in the case that the accused utilised the Sandal oil money, for the four calls for the money made by him on Mr. Mavlankar, knowing it to be such money

33. The evidence clearly shows that Mr. Sitaramachar had absolutely no knowledge till about November 1926 that Mr. Mavlankar was remitting Sandal oil moneys in response to his calls.

34. The evidence is likewise clear how Mr. Sitaramachar strongly protested against the conduct of Mr. Mavlankar when he came to know of his (Mr. Mavlankar's) misdeeds.

35. It is likewise clear how Mr. Mavlankar was fabricating evidence to blackmail Mr. Sitaramachar, a circumstance strongly exploding the Learned Magistrate's theory

theory of conspiracy between the accused [illegible] Mr. Gavlankar.

36. The Lower Court entirely failed to appreciate the explanations given by the accused in respect of the four drawings that go to make up the so-called charge against the accused.

37. The Lower Court entirely misunderstood the evidence of Mr.Thimmiah, the defence witness

38. The Lower Court erred in observing that there is direct evidence of the knowledge of the accused in the case of Rs.600/-. The exhibits referred to in this connection were misread and misunderstood by the Learned Magistrate.

39. The Lower Court erred in saying that the telegrams were sent in ~~xxx~~ "A very cunning manner". Cunningness, (?) if any, was certainly not on the part of Mr.Sitaramachar. The evidence clearly shows that Mr.Sitaramachar is not capable of any cunningness.

40. In the matter of drawing of Rs.2,000/- the Lower Court entirely misunderstood the circumstances of the drawing [illegible] Thimmiah's evidence on the point and the account adjustments as well. It is not clear why the Learned Magistrate drew a pointed attention to the payment of Rs.600/- paid to Mr.Sitaramachar for his allowances ignoring even the payments made

41. The Lower Court convicts the acc on constructive Trust, constructive con and constructive utilisation.

42. The accused is vaguely charged wi criminal Breach of Trust without specify the form of the Breach and in the judgme the Learned Magistrate attempts to ransa the various forms of Breach of Trust enu in Section 405 of the Code.

43. The Lower Court entirely failed t that barring the huge amount admitted Misappropriated by Mr. Gavlankar himself there was no loss to the Mysore Governmer This was amply proved by the evidence in the case.

44. Under the caption "concealment of pr the Learned Magistrate draws prodfusely on own imagination, on his own interpretation letters and arrives at absolutely unwarrante inferences.

45. The Lower Court makes unwarranted references to American drawings without having the American accounts before the Court and refers to Mr. Cox's letters which were unproved and which were practically conceded to be inadmissible in evidence.

46. Mr. Cox's letters relied on by the Learned Magistrate, contain incorrect and untrue statements.

47. The Lower Court grossly ignores its

48. The Lower Court failed to see that the accused gave his free permission to hand over all confidential communications to Mr.Rice.

49. The Lower Court failed to see the circumstances under which Mr.Sitaramachar wrote the confidential letters to Mr. Sylvester although the Lower Court was fully apprised of the same.

50. The Learned Magistrate has very wrong notion of running account and unsettled account.

51. The Learned Magistrate made no attempt to see what really is consistent with innocence and what is not.

52. All the calculations of the Learned Magistrate are erroneous and unsound in Law and unwarranted by facts.

53. The Learned Magistrate while deprecating the view which a layman may take has himself proceeded on a layman's standard in finding the accused guilty.

54. The Learned Magistrate while observing that in view of Mr.Sitaramachar's status in life even the lightest sentence of imprisonment would ruin his future, erroneously thought it necessary to utilise the highest power vested in him by Law.

55. In view of the fact that the Learned Magistr finds at least two circumstances in favour of the accused, the sentence passed by the

56. The Lower Court failed to see whatever may be the legal status of Mr. Gavlankar, Mr.Sitaramachar cannot be held answerable in a Criminal Court for the acts of Mr. Gavlankar.

57. The Learned Magistrate has throughout encroached on the precints of Civil Law and converted the same to the use of a Criminal Trial. In the judgment under consideration, theoretic responsibility is mistaken for criminal liability.

58. The Lower Court entirely misunderstood the purpose of the clause in Ex.P.14 as to Arbitration.

59. The Lower Court failed to see that no motive worth the name is either suggested or even proved as to why Mr.Sitaramachar should commit huge frauds in the interests of the firms wherein he was but one of the various directors.

60. The Lower Court has drawn inferences as to the rights and duties of the Managing Director without the least foundation in evidence about the same. In fact the Lower Court has even gone against the evidence of Mr. Gavlankar and the Resolutions of the Board of Directors on this point.

61. The whole case both on facts and in Law has been entirely misconceived by the Trial Court. The case is of purely civil nature for which the appellant can in no manner be saddled with any criminal liabilit

62. The acknowledgment of thanks to various quarters at the end of Judgment, the varying accounts rendered by a number of expert accountants examined in the case, the resort to over a thousand exhibits covering a period of more than six years, the recourse to several sections of the Contract Act and treatises and rulings thereon and a free and extravagent use of Sections 9 and 15 of the Indian Evidence Act clearly prove that the matter involved was pre-eminently a matter for an experienced Civil Tribunal and not for a Criminal Court.

This insinuation to appear. The eminent defence Counsel could not have forgotten his own ethics of the knowledge of civil law on the part of the learned Chief Magistrate and how his efforts misunderstood civil matters illustrated therein have been expressed in no uncertain terms. The -courtesy.

63. The Learned Magistrate's judgment is immensely influenced to the prejudice of the accused by a consideration of matters extraneous to the ~~xxxxxx~~ charge in question.

64. The appellant ventures to submit that the judgment in appeal is one-sided. In spite of the nature and extent of the accused's defence the Lower Court has not at all taken into consideration several important exhibits in the case, showing the innocence of the accused.

Therefore the appellant prays that this Hon'ble Court may be pleased to set aside the conviction and sentence in appeal and direct the accused to be set at liberty.

True Copy
Venkatrama Iyer
Advocate
Cuddapah 28/9/29

True copy of
the grounds of
Appeal
& the Public Prosecutor

Interim Assistant
Advocate
Kegone for applt
23/9/29.

Public Prosecutor
Kegone
23/9/29.

Appendix F G—1

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the 192

Date of issue.....

Signed by.....

List of enclosures.....

Copied by.....

Examined by.....

Section Law

File No. 43-29

Serial No. 4

No. 207 (4)

To

The District magistrate
Mysore

Sir,

With reference to your letter No G1-733/29-30 dated 4th Oct 1929 regarding the Criminal Appeal No: 55/29-30 on the file of the Sessions Judge, Mysore (B. Sitaramachar Vs Govt), I am directed to forward for your information copy of the G.O P 1884 6/Law 43-29 dated 28th Sept 1929.

I have the honour to be
Sir
Your most obedient servant

WD 063—GPB—20,000—1-8-29

In reply please refer to
No. 348

Tel. Address:—
"JURIST," Bangalore.

IN MYSORE,

Bangalore....4th November.....*19* 29.

FROM

M. RAMACHANDRA RAO, ESQ., B.A., B.L.,
GOVERNMENT ADVOCATE IN MYSORE,
BANGALORE.

To

A. R. Nageswara Iyer, Esq., B.A., B.L.,
Advocate, BANGALORE CITY.

SIR,

Adverting to Government Order No.P. 1884-6/Law. 43-29-2, dated the 28th September 1929, and in continuation of this office letter No. 295, dated the 30th September 1929, I have the honor to forward herewith, for information and further action, the notice served on me by the Chief Court in Criminal Appeal No. 18 of 1929-30 on their file. (B.Sitharamachar - Appellant). The appeal is posted to the 15th instant, as mentioned in the notice.

I have the honor to be,

Sir,

Your most obedient servant,

Sd/- M. RAMACHANDRA RAO.
Government Advocate.

Memo No. 343

Dated BANGALORE, the 4th Nov. 1929.

Copy of the above is forwarded, with compliments, to the Secretary to Government, Law Department, for information.

M. Ramachandra Rao

Government Advocate.

2093
P

POLICE DEPARTMENT.

No. C 1029/29 civil

OFFICE OF THE
INSPECTOR-GENERAL OF POLICE IN MYSORE

Dated, Bangalore, 2nd Nov. 1929.

6.11.29

FROM

S. HIRIANNAIYA, ESQ., M.A., B.L.,
Inspector-General of Police in Mysore,
Bangalore.

To

P.Mahadevayya, Esq., B.A., B.L.,
Legal Remembrancer and Law Secretary
to the Government of Mysore,
Bangalor

Sir,

I have the honour to state that the Superintendent of Police, Bangalore City and Taluk reports in his letter No. C.C. 44/29-30 dated the 29th October 1929 (copy enclosed) that the appeal in the sandal oil defalcation case will be heard in the Chief Court shortly and that the records connected with the case have to be got printed to facilitate the work of referencing. He requests that sanction of Government may be obtained to get the entire records including exhibits etc. printed at Government cost. The case is a very important one and most of the exhibits, being already torn or damaged cannot be handled without further damage and without inconvenience.

2. For the foregoing reasons, I request that you will be so good as to obtain the sanction of Government to get the entire records in the case printed at Government cost.

MK

I have the honour to be,
Sir,
Your most obedient servant,
G. Lakshmiappa
Head Quarter Office Assistat,
For Inspector General of Police
(Absent on leave)

Letter No. C.C. 44/29-30 dated 29th October 1929 from C.M.H. Ranajodha Singh, Esq., B.A., District Superintendent of Police, Bangalore City and Taluk, Bangalore to the Inspector General of Police in Mysore, Bangalore.

I have the honour to state that the appeal in Sandal Oil Defalcation case will be heard in the Chief Court shortly and the records have to be got printed to facilitate the work of referencing etc. So I request you to kindly move the Government to have all the records including - - exhibits etc. printed at the Government cost. The case - - being a very important one and most of the exhibits being either torn, or damaged, they cannot be handled without being further damaged and without inconvenience. Further there must be a common copy which can be used easily by Judges and by the Counsel on either side.

"Copy"

G. Lankaraja Iyer

For Inspector General of Police.

Section

File No.

Serial No.

No. 1470

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

To

The Inspector General of P.

Date of issue.....17/11/29.....

Sir,

Signed by.....

With reference to your letter No: C 1029 dated 7th Nov 1929 regarding the printing of records in the Sandal oil defalcation case now under appeal before the Chief Court I am directed to state that Mr. A. R. Nageswara Iyer B.A., Advocate who appears for the prosecution in the appeal, has been requested to see the Chief Court

List of enclosures.....

Copied by.....

Examined by.....

over

~~a manner, as~~

~~this wr~~

~~information~~

being awarded

I have the

M/ Legal

Col. to wr. A.K. Iyaswara

[illegible]

information and early ~~report~~

Appendix F G—1

SUBJECT.....

.....

.....

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

Date of issue..... 26/11/29

Signed by ..... W Pm

List of enclosures.....

Copied by..... Cyp 26/11

Examined by.....

Section

File No.

Serial No

No. 7285 C

To. The Superintendant
Govt Printing Press
Bangalore

Sir,

It has been decid
to get the records in the
Sandal oil defalcation c
printed and the chief
Court has been moved
in the matter to ~~send~~ forwa
~~you the~~ records. to you for pr
I am t
to request you to make
arrange for getting them
printed by the 10th
of December. Since the

... posted for hearing
on 17th Dec^r in the Court ...
The matter may kindly
noted as immediate.

Thanks

Dy Mr
Legal A^r

2857

... me J.Q.I. vide
matter of this office
reference ~~to this~~ no: P 4707
dt 19.11.29

Legal A^r

Section

File No.

Serial No.

No. 7960

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the 192

To

H. K. Nageswara Rao
Advocate,
Bangalore.

Date of issue 28/12/29

Signed by

Sir

With reference to your letter No. of the 26th instant, I am to state regarding the printing of the records in the Sandal oil case, I am to inform you that the Superintendent Govt Press has been addressed

List of enclosures.....

Copied by

ADVOCATE.
ಶಾಸ್ತ್ರಿ ಅಯ್ಯರ್, ಬಿ.ಎ.,ಬಿ.ಎಲ್.,
ಅಡ್ವೊಕೇಟು,
ಚಿಕ್ಕಪೇಟೆ, ಬೆಂಗಳೂರು ಸಿಟಿ.

CHICKPET.

Bangalore City 28th Nov 1929.

Immediate.

To

P. Mahadevayya, Esq., B.A.B.L.,

Law Secretary to the Government of Mysore,

Bangalore.

Dear Sir,

Please let me know if I may represent to the Court as mentioned by you in person last week, that the Government are desirous of having the records in Mr. B. Seetharamachar's case printed, and that the Government Press will do the work it without delay.

Yours sincerely,

V. Krishnaswamy Iyer

'iary No. of letter replied to.....

Section

File No.

Serial No.

No. 2914

General and Revenue Secretariat

( )

the 192

To

A. R. Nageswara Iyer Esq
Advocate
Bangalore

ate of issue 28/11/29

gned by M N S

Sir,

With reference to your letter of this date, regarding t printing of records in Sree ramachar's case, I am di to state that Governmen desirous of having them printed and as already intimated to you in this letter No: P 2910 of the to the Superintendent, G ment Press has been

List of enclosures.....

Copied by 29/11/29

Examined by.....

WD 0399—GPB—20,000—18-9-28

addressed in the matter
~~to get~~ I am to request you
to kindly see that the
records are sent immediately
from the Chief Const to the
Government Press, so that they
may be pri d by the
10th of December.

I have etc

P. M.
Registrar

Section

File No.

Serial No.

No. P 2963

Diary No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

To

The Inspector General of P

Date of issue 3/12/29

Signed by

Sir,

In continuation of this office letter No: P 2857 dated 26th Nov^r 1929 in the matter of getting the records in the Sandal oil case print at the Government Press, I am directed to state that Mr A.R. Vageswara Iyer reports that Mr D. Seshasiri Rao C.I. & Inspector may be instructed to assist him in the printing of the records as also

List of enclosures.....

Copied by

Examined by.....

are the Chief [illegible]

to request you to

my direct Mr Deshapriya

cordingly

The matter [illegible] to

treated as immediat

[illegible]

[illegible] Legal [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

Section Law

File No.

Serial No.

No. 3006 (-)

Diary No. of letter replied to.....

General and Revenue Secretariat

the *192*

To

The Mr. Sir.....

Date of issue 6/12/29

Signed by.....

I am directed to
herewith for information
of the G.O. no. P. 1884-6 Law
43-29-28 28.9.29 a. Tamil
Mr. A. R. Nageswara Iyer, Advocate
Tanjore to appear on behalf
of Govt. before the ~~Executive~~
in the Criminal appeal filed
by ~~Sesha Ammal & Others~~ the
in the Land Oil Detalcan

list of enclosures 1

Copied by.....

Section

File No.

Serial No

Diary No. of letter replied to.....

No. P 312/

General and Revenue Secretariat

( )

the *192*

To B. Puttaiah
Superintendent
Govt Press

Date of issue 13/12/29

Signed by

Sir,

I am directed to invite your personal attention to ~~this~~ the letter No. P 2856 dated 26.11 regarding the price of the records in the Sandal oil details Case and to request you to furnish the above information at your

List of enclosures.....

Copied by

completed I am in
ate now the appeal
posted ~~Sept~~ for hearin
ly in January and
printed records have
efore to be sent
re without fail by
end of this month

Yours sn
~~Have the~~

Legal R[V]

D. O. No. P. 13104

B. PUTTAIYA, Esq., B.A.,
Superintendent.

OFFICE OF THE SUPERINTENDENT,
GOVERNMENT PRINTING IN MYSORE. 25

Bangalore, dated the 14th Decr. 192 9.

Dear Sir,

With reference to your D. O. No: P. 3127/Law., dated 13th instant, requesting to report the progress in the printing of the records of the Sandal Oil Case, I beg to state that the records consisting of 500 closely typed pages have been received and are being composed on the two composing machines we have got in the Press, working from morning till evening. The matter is estimated to come to over 350 printed pages, and we are doing our utmost to complete it as soon as possible.

But I am informed that there is a further batch of record yet to be sent, which has not reached the Press up to now. If this record is as voluminous as the one now in hand or even less, it is absolutely impossible to compose it in the time required, as the present work on hand will take up all the available time. I have informed accordingly to the Registrar of the Chief Court from whom the first batch of the records was received in the Press for printing.

Yours sincerely,
B. Puttaiya

P. Mahadevayya, Esq., B.A., B.L.,
Secretary to Government,
Law Department,
Bangalore.

Section

File No.

Serial No.

No. P. 3198

Enc. one

Diary No. of letter replied to.....

General and Revenue Secretariat

)

the *192*

To

A. R. Nageswara Rao

Date of issue.....

Signed by.....

Dear Sir,

In forwarding he
for your information a cop
of the letter No: 1906 dated
Dec^r 1929 from the Superint
of the Government Pres
the Printing of the recor
the Sandal oil case, I am
request you to [illegible] a
and send a report
in the Chief Court, regarding the fur
and report about the
I read

List of enclosures.....

Copied by.....

Dear Sir, P 3218(1) Land

With reference to your D.O.letter No.1? dated 14th December 1922, regarding the printing of records in the Sankaridrug case, I am to forward herewith a copy of the letter received to-day from Mr. Rajeswara Iyer in the matter and to request you to see that the printing of the exhibits and other records in the case is finished without fail by the last week of January as mentioned therein.

Yours sincerely.

To

B.Puttaiya, Esq., B.A., Supt., Govt., Printing.

M E M O. No. P 3219 dy 19/12/22

Copy of the above is forwarded with compliments to Mr. A.R.Rajeswara Iyer with reference to his letter of to-day's date.

Legal Remembrancer

Section

File No.

Serial No.

No. 137

No. of letter replied to.....

General and Revenue Secretariat

( )

the *192*

To

.....

Date of issue 14/12/29

Signed by.....

Dear Mr Nazeeruddin,

Re: Contts sheets & other statements of accts in your letter of to-day, wanted by you. I regret You will kindly send in Diesha yourself to be taken from the Secretariat

List of enclosures.....

14/12

Copied by.....

Examined by.....

IN THE CHIEF COURT OF MYSORE AT BANGALORE.

Tuesday the 1st day of April 1930.

PRESENT.

Rajadharmapravina

Mr. Justice C.S. DORASWAMI IYER, Chief Judge.

and

Mr. Justice G.Sreenivasa Iyer.

PETITION OF CRIMINAL APPEAL
No. 18 of 1929-30
against the conviction and sentence by the Additional District Magistrate of Mysore, under section 409 of the Indian Penal Code, in Criminal case No.1 of 1928-29.

APPELLANT.
Mr. B.Sitarama.....
(accused)

Judgment.

J U D G M E N T.

Mr. B. Sitaramachar, Managing Director of the Ess Products Co., Ltd. Mysore, who were the agents of the G ment of Mysore, for the sale of their sandal oil, in Eur and America, was tried by the Additional District Magistr of Mysore, under section 409, Indian Penal Code, for crimi. breach of trust, at Mysore, in respect of an aggregate sum of £.7,837-13-1 between the 1st January 1926 and 30th June 1926. The learned Magistrate convicted Mr. B.Sitaramachar of the offence with which he was charged, and sentenced him to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1000/-

Deducting the commission on sales [illegible] incurred by the Agents, the amount actually misappropriated is alleged to be £.7,573-9-7. Setting off the short recoveries against the excess collection made during the above period of six months, the balance of money in respect of which the charge is found to have been proved is £.7,365-17-10. The accused has preferred this appeal.

The Essenflour Products Ltd., is a private company incorporated under the Mysore Companies Regulation 1913. The control and management of the Company vested in a Board of four Directors, viz., Messrs (1) M.L.Vardamaniah, (2) B.Sitaramachar, (3) B.K.Garudachar and (4) M.Harianna; of whom Mr. M.L. Vardamaniah was styled the Governing Director. Besides these four Directors, there were 9 share-holders. There was another private Company similarly incorporated called the Mysore Asbestos Company Ltd., having the same shareholders on its register, and the same Board of Management. These two concerns were floated by the Mysore Development Syndicate, which consisted of 9 members including the said 4 Directors. Towards the close of the year 1922 the Essenflour Products Company were anxious to

to secure the sole selling agency of the whole of the output of Mysore sandal oil. Certain proposals as regard the terms of the agency appear to have been put forward by the Essenflour Products Company on the 8th December 1922, but they do not seem to have materialised. On the 27th May 1923, certain alternative proposals were made (Vide. Exhibit P (1). the important terms of which. for our present purposes, are the following:-

> "Essenflour Products,Ltd., shall be bound to submit to Government a monthly account of all oil received by them both in India and abroad and furnish at the end of each month accurate accounts in such a manner as may be prescribed by them. Such accounts will show the total -- quantity of oil received by them, the quantity sold from time to time, the sales realisations the amount credited to the account of the Mysore Government either in India or abroad and the amount outstanding.
>
> "Essenflour Products, Ltd., shall be bound to credit every month to the treasuries in Mysor or to their Banks abroad the sales amount -- realised during the previous month.
>
> "Essenflour Products, Ltd., shall also be liable for all moneys recoverable on sales effected and no question of bad debts shall aris
>
> "For these ~~mx~~ services Essenflour Products Ltd., should be remunerated to the extent of 3½% on the gross sales realisations.

Government in their letter dated the 6th July 1923, appointed the Essenflour Products,Ltd.generally to

Ltd., with effect from the 1st September 1923 (Exhibit P (2), pending the drawing up andd execution of formal agency documents, and from Exhibit P(3), a letter -- dated 7th July 1923, addressed by Government to the - Director of the Sandalwood oil factories, it is clear that the incoming Agents,were to take over and do the work that was being done till then by the outgoing Agents, Messrs. Whiffin & Sons. At the same time, Mr. C Raghunatha Rao Sahib, the officer on deputation in -- London, was advised to take all necessary action for the transfer of the agency to the new agents and to pay special attention to the arrangements which the new agents had to make for ensuring efficient organisation in the matter of marketing the oils. Mr. Sitaramachar immediately sailed for London to make arrangements for taking over charge of the unsold stock, from Messrs. Whiffin & Sons and for organising sales in the foreign markets, through a representative in London, and for doing all other things that were necessary for efficiently carrying on and expanding the business. He -- reached London in August 1923.

Mr. K.B.Mavlankar (Prosecution Witness No. 19) who was doing business as merchant and manufacturer in London for some years past, was the agent of the Essenflour Products Co., Ltd., for the sale of their products, from the year 1919, and continued as [illegible] when Mr. Sitaramachar went to London in August 1923 to fix up the sale of sandal oil; Mr. Mavlanker was then appointed on behalf of the Essenflour Products Co Ltd. to do the sandal oil business also in Europe on certain terms which do not seem to have been reduced to writing.

The stock on hand with Whiffins and Sons was tal over by Mr. Sitaramachar on the 3rd September 1923 and removed to the stores of Essenflour Products .. Company, Ltd., in Beauchamp/2 Street, London (Vide Exhibit P4).

The formal contract (Exhibit P. 14) between the agents and Government was however after great delay executed by the Agents only on 10-6-1925. The import terms and conditions thereof relevant for the purpos of this case, are:-

> "The Agents shall keep in good order books o accounts of all oil that the Director shall from time to time consign to them and of all sales, receipts payments and other transaction concerning the same, and all books, accounts and other writings relative to the matters aforesaid shall at all reasonable times during the said term and within one calendar month after the expiration or determination thereof be open to the inspection of the Director (on behalf of Government) who shall have free and unrestrained liberty and power to copy out the same or any parts thereof at his free will and pleasure -- either by himself or his clerks or agents. The Agents should submit true and complete accounts regularly at the end of each month of all transactions effected during the month in such manner as may be prescribed by the Director. Such accoun shall, among other particulars show the details respecting sales, the stock of oil received, disposed of and remaining on hand, payments received with dates of receipts, remittances to Messrs Coutts and Co, the Government Bankers, with dates and the amount outstanding (Clause 5).

uthorised by Government, received on behalf of the Government hould be remitted to the account of the Government of Mysore ith Messrs. Coutts and Co., in Lomdon without any delay and ot less than once a week (Clause 6'

"The Agents shall be responsible to the Director for all the sandalwood oil delivered or supplied to them and shall effect full and satisfactory insurance against losses from all causes whatsoever in respect of all oil held in stock by them (Clause 9)

"The Agents shall be liable for all moneys recoverable on the sales effected by them and any credit given by them shall be at their own risk and the Agents shall not be entitled to raise any question of bad debts.

The Agents shall remit such amounts to the credit of Government within six months after the sale, whether they have recovered the same or not". (Clause 10). This agreement was to take effect from 1-9-1923 and to be current for a period of three years. It was renewed for a further peiod of three years and four months from 1st September 1926, as per Exhibit P.17.

Mr. Sitaramachar left for London about the end of July 1923, to make the necessary arrangements. In his letter dated 29th August 1923 (Exhibit P.65) written from London, he suggested that for sandal oil business Coutts and Co., might be appointed Bankers as among other advantages, it would create confidence among the buyers and Government. In regard to sale realizations, he proposed in that letter that all moneys would be paid to Coutts and Co., to the account of Essenflou and that on every Monday they would automatically transfer t realizations, less agency commission, to the account of the Mysore Government. As regards invoices, he proposed to have printed with specific instructions to pay to Coutts and Co., The object of it was that of it was so done the buyers would

would issue crossed cheques to Coutts and Co., and to none else whoever might represent the Agents in London. There would also be the further guarantee-- as he put it- that not even the governing not the Managing Director, would have any chance when they happened to be in England, to handle the sale realisations. Furthermore, he added that the preparation of accounts and statements would be very much simplified. After seeing the Manager and the Secretary of Coutts and Co., Mr. Sitaramachar again wrote to Mr.Vardamaniah on 6-9-23 (Vide Exhibit P.66) in which he referred to the Banking arrangements he had made in the following terms:-

> "The arrangement is that all sales realisations will be paid to the account of Essenflour Products Ltd., with Messrs.Coutts, and at the end of every week, or in the beginning, say Monday, the Bankers will automatically transfer the amount to our credit with them to the account of the Mysore Government. At the end of the month we-- The Essenflour Products Ltd., -- will send them a statement of accounts which will include our commission, --- freight charges for foreign shipments and dock charges. Deducting these, Messrs. Coutts will credit whatever - balance may remain, to the account of the Mysore Government. They will also furnish us and the Mysore Government weekly and monthly reports. I am sure you will consider this arrangement more satisfactory than the one we had contemplated in the beginning. The Mysore Government also will see that the business we do as Agents is quite open for their inspection at any time".

The above arrangement was confirmed by the Governing Director by his cablegram dated 20-9-23 (Exhibit P.67), and in doing so, he asked the Managing Director to make arrangement from the Bankers for securing financial requirements in case of need. At a meeting of the Directors of the Essenflour -- Products Ltd., held on 26-9-1923 resolutions were passed empowering the Company to open an account with Coutts & Co., in their name, and authorising Mr. Sitaramachar, the Managing

Managing Director, to sign cheques on their behalf (Exhibit P. 70). But Coutts and Co., would not accept a resolution of the Directors as sufficient authority to enable Mr. Sitaramachar to sign cheques on behalf of the Company, and they suggested that Article 84 of the Articles of Association should be amended, as -- otherwise they would not recognise Mr. Sitaramachar's authority even to instruct the Bank to transfer sums from Essenflour Sandal Oil account to Mysore Government Royalty account. Mr. Sitaramachar therefore -- suggested in his letter P. 74 dated 24-10-23 that after passing a resolution amending Article 84, at a general body meeting, the Directors should pass a resolution authorising him and Mr. Mavlanker to operate on the account at Coutts and Co., The reason for including Mx Mr. Mavlankar's name was that during Mr.Sitaramachar's absence Mr. Mavlankar will have to issue the necessary instructions to the Bankers to transfer from Essenflour account to the Mysore Government account, and as that meant operating on that account,Mr. Mavlankar also should be similarly empowered. Mr. Vardamaniah was assured that neither he nor Mr. Mavlankar would operate on Essenflour Sandal Oil account unless it be to issue instructions to transfer, and that this was made clear to Coutts & Co., Resolutions were duly passed in the matter of amending Article 84, and empowering Messrs. Vardamaniah, Sitaramachar and Mavlankar to operate on the account, on the advice of Mr. Rose. Manager of the Mysore Bank, Ltd as to how the resolutions should be worded. Mr. Vardamaniah sent copies of these resolutions to Coutts and Co., (Exhibit P.80 and added that he expected there would be no objection to transfer the amount from Essenflour to Mysore - Government, on the instructions of Mr. Sitaramachar and Mr. Mavlankar.

The case for the prosecution is that according to the agreement with Government the Agents had no authority to utilize the sandal oil collections for any purpose of their own, and that in diverting the sum of £.7,365-17-10 for the use of their other concerns, they committed criminal breach of trust. How this sum is arrived at may be seen from the subjoined tabular statement prepared by the Magistrate and -- embodied in his judgment at page 40 of the print book minus the sum of £ 207-11-9 already referred to.

Total value 2	Commission on sales at 5½% 3	Expenses incurred by Agents. 4	Amount withdrawn by agents. 5	Amount appropriated. 6
£. s. d.	£. s. d.	£. s. d.	£. s. d.	£. s. d.
2,640- 2- 5	92- 8- 3	50- 3- 7 for January (Ex.C(3))	80- 0- 0 on 4-1-26 (p.108)	1,126- 5- 2
			1,138-13- 5 on 11-1-26 (P.109)	
14,911-16- 2	522- 5- 6	146- 4- 7 for January & February (£96-1-0 for February) (Ex.C (3))	17-10- 0 on 16-1-26 (P.109	
			1500- 0- 0 on 27-2-26 (P.715)	848-19-11
29,143- 0- 1	1,020- 0- 2	317- 3- 9	89-10- 0 on 9-3-26 (P.117)	752-15-11
			2,000-0- 0 on 3-5-26 (126)-	
17,020- 2- 7	592- 1- 0	162-10- 5	5,600- 0- 0 on 29-6-26 (P.133)	4,845- 8- 7
	2,236-14-11	625-18-9		7,573- 9- 7

Total amount of sandal oil collections not credited to Government £7,573-9-7

The question for consideration is whether the Prosecutio have adduced satisfactory and convincing evidence to prove th the accused has committed the offence of criminal breach of trust in respect of all or any of the items included in the said aggregate sum of £ 365-17-10. The ingredients of an offence under Section 409 to be established are :-

(1) that the accused was an agent.

(2) that in such capacity he was entrusted with the money in question, or with dominion over it,

(3) that he dishonestly misappropriated or converted to his own use, or dishonestly used that money, or wilfully suffered any other person so to do,

and (4) that it was done in violation of any legal contract, express or implied which he had made with Government, regarding the way in which the money should be disposed of.

It was argued by the learned counsel for the accused that the conviction by the lower court was for the substantive offence under Section 409 I.P.C. and not for conspiracy to commit crimi breach of trust, nor for abetment and consequnetly all the necessary elements that go to make up the substantive offence under Section 409 must be established by theprosecution. It may be mentioned in passing that the substantive offence of criminal conspiracy contained in Section 120 A and 120 B of the British Indian Penal Code, does not find a place in the Penal Code as in force in Mysore.

We may now take up the four items of moneys aggregating to £ 7000 and odd, included in the charge, and deal with them seriatem :-

(1) £ 1,138-13-5 is the 1st item. The antecedent circumstances preceding the withdrawal of this sum may be briefly stated :-

To pay the debts due to the Bank of Mysore by the three allied concerns, Messrs. B.K.Garudachar, Sajjanna Rao, Parameswara Bhat, Hariyanna and Vardhamaniah were obliged to borrow Rs.4 lakhs from the firm of Gokuldas Jamna Dass & Co., of Madras,

3½ lakhs on 17-8-1925,

¼ lakh on 28-9-1925,

¼ lakh on 15-10-1925.

Interest due on this sum up to the end of December 1925, came to Rs.11,979-11-0. Mr. Hariyanna one of the Directors of Essenflour wrote to Mr.Sitaramachar Vide Exhibit P.155--on 28-12-1925, asking him to arrange for payment of the same. Seeing that no cheque was received by the Madras firm till 7-1-1926, Mr.Hariyanna wrote to Mr.Sitharamachar again --Vide. Exhibit P.156 dated 8-1-1926 -- expressing regret for the delay, and hoping that by that time a cheque would have been sent. Mr.Sajjan Rao another Director seems also to have sent a wire to Mr.Sitharamachar the same morning to the same effect. In the meantime Mr. Sitaramachar sent a cable to the London office, Ex.P.158 dated 7-1-1926 thus :

"Please remit Rs.15,000/- through Eastern Bank to Essenflour account with Mysore Bank.Extremely urgent."

Mr. Malvlankar cabled on the 8th idem:

"Remitting to-morrow" - Vide. Exhibit P. 162. But the remittance was not received by the Mysore Bank even on the 9th (Vide. Exhibit P.164 and P.165). On the 11th idem (Vide.Exhibit P.157) Mr.Nariyanna again pressed for remittance being sent to the Madras firm. Mr. Mavlankar, through the Eastern Bank, remitt Rs. 15,000 = £ 1,138-13-5, to the Mysore Bank, on 9-1-1926 (Vide.Exhibits P.166 and 168). The Mysore Bank intimated the Governing Director of Essenflour on 15-1-1926, that the sum of Rs. 15,000/- was received from London and that the same was placed to their credit in their Mysore Branch - Vide. Exhibit P. 170. Thereupon Mr.Sitharamachar drew a cheque on 16-1-1926 on the Bank of Mysore for Rs.11,979-11-0, for the issue of a Bank draft on the Imperial Bank in favour of Mr.Sajjan Rao (Vide.Exhibits P.171 (a) and (b) for paying off the interest due to the Madras firm. Before the receipt of the sum of Rs.15,000/- from London, the Essenflours had overdrawn on the Mysore Bank to th extent of Rs.4,081-4-5. The sum of £ 1,138-13-5 received from London was thus utilised for wiping off the overdraft account of the Mysore Bank, and the payment of interest to the Madras firm.

At London, the opening balance on 1-1-1925 of the sandal oil account with Coutts & Co., stood at £ 599-7-3. Sandal oil collections remitted to Coutts & Co., between 1-1-26 and 11-1-26 were £ 1,613-4-7. On 9-1-26 the receipts were £ 1,106-19-7 (Vide Ex. P.108). Mr. Mavlankar drew from this account £ 1,138-13 and remitted the same. ~~through~~ through Eastern Bank, to the Mysore Bank, to the account of Essenflours (See also ex.P.109 and P.492). There is no evidence as to when the various amounts aggregating the -- --

the amount put into Coutts' account by Mr.Mavlanker were collected from customers. It is in evidence that in the sandal oil accounts of Coutts & Co., other items than the sale proceeds of sandal oil in Europe do not find their way. In such circumstances, the question for consideration is whether there is sufficient evidence to prove that Mr. Sitharamachar was aware of the fact that his demand made on behalf of Essenflour was going to be met out of sandal oil collections in the hands of Mr.Mavlanker, or by withdrawal from Coutts & Co's., sandal oil accounts.

Another question arises as to why Mr. Mavlanker should put sandal oil collections into Coutts & Co., and dra therefrom either on the same day or the following day, and then remit it to Essenflour, instead of remitting it, direct from out of the collections. The reason may be that he woul be held personally liable, if he had done so, in case the money was not recouped, whereas he would escape such liability if he had recourse to Coutts & Co's., medium, before the remittance was sent.

(3) The 2nd item refers to the withdrawal of £ 1,500 o 27-2-1926.

On the 23rd February 1926 Mr. Sitharamachar sent a cable to Mr. Mavlankar :

"Please remit asbestos account Mysore Bank £ 1,500-
Urgent."

(Vide Ex.P.173 and P.175) On 27-2-1926 Mr. Mavlanker sent a reply cablegram stating:

paying £ 1,500 Saturday.
Asbestos account
(Exhibit P. 177)

On 28-2-1926 Mavlanker cabled to Mr. Sitharamachar :-

"Have remitted £.1,500"

(Exhibit P. 178).

The Eastern Bank remitted on 27-2-1926 £ 1,500 by T.T. to the Bank of Mysore, Bangalore, t o the credit of the Mysore Asbestos Company Ltd., (Vide.Ex. P. 179 dated 1-3-1926.) Mr. Mavlanker in the meantime withdrew on 27-2-1926 £ 1,500/- from Coutts & Co., sandal oil account (Vide.Ex.P.115 Coutts & Co., weekly statement debitting Eastern Bank with this sum). On 1-3-1926, the Bank of Mysore acknowledged receipt of this amount (Vide.Asbestos account P.180 (a). After giving receipt to this sum in the Asbestos accounts, it was transferred from Asbestos account to Essenflour account (Vide Ex.P.152 (d) and P. 291 (c) dated 30-6-1926). This sum of £ 1,500 = Rs. 19,759-13-9 was utilised among all the allied concerns.

Rs. 6,000/- by Essenflour,

Rs. 9,000/- by the Mysore Development Syndicate,

and Rs. 5,000/- by the Asbestos Company.

It is argued that Mr. Sitharamachar had no reason to think that asbestos demand would be met from sandal oil, more so, when it is only Essenflour that can operate on sandal oil account and not the other concerns. (See Mavlanker's evidence). Moreover Asbestos had to its credit, at the end of January 1926, £ 1,174-16-(it is really £ 1,105-1-9. See Ex.D.123,D.124 and D.125) with Mr. Mavlanker, (see K.T.Sundara Rao's evidence at page 135); and Mavlanker had also stock of Mica and Asbestos at that t i m e

time (See pp.50 and 51 accounts).

(3) The 3rd item is £ 2,000 withdrawn on 3-5-1926.

Mr.Sitharamachar sent a cable to Mr. Mavlankar on 29-4-26 asking him :-

"Please remit by wire £ 2,000 Mysore Bank Asbestos account".

(Vide Ex.P. 182).

Coutts & Cos., accounts show that Mr. Mavlankar withdrew £ 2,000 from sandal oil account (Vide Ex. P. 126), and put it in Eastern Bank; he asked the Eastern Bank on 3-5-1926, to send a T.T. and on 4-5-1926 the Eastern Bank, sent a wire to their Madras Branch thus :-

"Pay £ 2,000/- Mysore Development Syndicate Mysore, Asbestos account from Essenflour."

(Vide Ex.P. 184).

On 7-5-1926, the Eastern Bank, Madras issued a cheque for Rs. 26,495-4-11 (less charges) = £ 2,000 in favour of the Mysore Development Syndicate, on the Mysore Bank,Mysore.

(Vide. Ex. P. 569).

Coutts & Cos., accounts, and the statement of particulars, sent by Essenflour to the Director of Sandalwood Oil factories, show that this sum of £ 2,000 was taken, by Mr. Mavlankar, from sandal oil collections, and remitted through the Eastern Bank, to the credit of Mysore Development Syndicate Asbestos account with the Bank of Mysore.

(Vide Ex.P. 590, P. 126, and P. 498).

(The equivalent of £ 2,000 = Rs.26,528-7-11).

Though this sum was remitted to the Asbestos account by Essenflour in the first instance, a sum of Rs.22,300/- out of this amount appears to have been disbursed to Essenflour on several dates between 10-5-1926 and 3-6-1926.

(4) The last item relates to a sum of £ 5,000/- witndrawn on 29-6-1926.

The Essenflour owed the Bank of Mysore on the Produce loan account a sum of Rs. 1,82,129-15-0 which, together with interest, came up to Rs. 1,89,521-13-0, and the Bank insisted upon this loan account being immediately settled. (Vide.Ex. 186 dated 26-2-26, 187 dated 19-11-26). Thereupon Mr. Harianna sent a cheque for Rs.14,666-10-8 on 26-6-1926 (Vide.Exhibit P.191), and Mr. Vardamaniah sent one for Rs.60,800/-. Both these cheques were sent to the Bank of Mysore for the proceeds being credited to the said produce Loan account (Vide Ex.P 195 dated 29-6-1926). It is also clear from Ex.P.190 dated 26-6-1926, that some arrangement was being made for the discharge of the produce loan, and this was known to Mr. Sajjana Rao, and through him to Mr.Harianna. It was at this juncture and on the very same day (26-6-1926) that Mr. Sitharamaonar wired to Mr.Mavlanker :-

"Have not you received my confidential letters regarding our financial requirements. Please remit by wire £ 5,600 to the Bank of Mysore,Ltd., Essonflour account, in addition remit by wire £ 4,400/- to the Imperial Bank of India, Bangalore, to the credit of M.L. Vardamaniah, Sowcar, Mysore. Please telegraph

remittance

remittance Monday positively. Telegraph what you have done (Vide. P.597 A.B. dated 26-6-26")

On 25-6-26, a day before, London wired to Bangalore.

Delivery 1615 | Vide Ex. P. 689
Remittance 5000 | dated 25-6-1926.

But as a matter of fact the remittance was not sent to Coutts & Co., on that day as advised. Mr.Sitharamachar sent anotherwire, on 26-6-26, to Mavlankar not to remit realisations to Government in that month, but to remit the same in the first week of July and subsequent weeks. (Vide Ex 597 C-D. dated 26-6-1926) Mr. Mavlankar wired back on 28-6-19:

Received your confidential letters dated 27th May. Instead of remitting £ 5,000 sandal advised last week, remitting £ 56000 to-morrow credit of Essenflour. Regret further immediate remittance impossible. (Vide. Ex.P.597 E-F).

To this Mr. Sitharamachar sent the following reply wire on 29-6-1926 :-

Referring to your telegram 28th instant remittance £ 4,400 credit of Vardamaniah, Imperial Bank, Bangalore, very important very urgent. Strain your utmost resources and telegraph, anxiously awaiting telegraphic advises.

(Vide Ex.P. 597 G.F. dated 28th June 1926).

It has to be remembered that this wire was sent on the same day (29-6-1926) on which Mr. Bardamaniah's cheque on the Imperial Bank was sent to the Mysore Bank for being credited to the Essenflours account (Vide Ex.P.195).

Mr. Mavlankar collected from Astiers on 1-5-1926 £ 5,475 the amount due on Invoice No.508 dated 14-4-1926 (Ex.P.562 B) but credited the same to Coutts and Company only on 29-6-1926 (Vide. Coutts' weekly statements Ex.P.590). There was at that time only a small sum of £ 341-12-6 in Coutts account to the credit of Essenflours. Mr.Mavlankar was thus able by putting in Astier's sum, to draw £ 5,600 from Coutts & Company on the same day, viz., 29-6-1926, and remit the same through the Eastern Bank to the Bank of Mysore to the credit of Essenflours. On 30-6-1926 the Bank of Mysore received a TT. for Rs. 74,860-2-9, the equivalent of £ 5,600 and this sum was credited to the Essenflour account (Vide Ex.P.198).

In the accounts of Essenflours at Mysore this amount was debited to Mavlankar, and credited to Coutts and Company on 30-6-1926 (Vide Ex.P.138 D, sandal oil journal): and when the amount was adjusted by the Mysore Bank towards the Essenflour produce loan account, the said loan account was debited, and Mr.Mavlankar credited, with the said amount. In Ex.P. 138 D this sum of £ 5,600 is expressly mentioned as the amount withdrawn at Coutts by Mavlankar on 29-6-1926.

The prosecution have also let in proof of four items of withdrawals before the period of charge, and four items after the period of charge, claiming that the same is relevant under the provisions of Sections 14 and 15 of the Evidence Act. Without discussing at present how far these items are relevant, and what use the prosecution can in law, make of the evidence offered in respect of these 8 items, we shall at this stage, merely advert to these items in the same way in which we dealt with the 4 items comprised within the charge period.

ITEMS PRIOR TO THE PERIOD OF CHARGE.

(1) The first of these items relates to £ 5,220 of stier's Bill.

On behalf of the Essenflour Products Ltd., Mr. Vardha-iah drew a bill on Mr. Mavlankar on 29-6-1923 for 4,000/- payable at 90 days sight, to the order of the k of Mysore, Bangalore (Ex.P.334 A). It was discounted with Mysore Bank on 30-6-1923 and the proceeds, viz., Rs. 181-13-1 were credited to the Essenflour account with Mysore Bank (Ex.P.327,P.328,P.599,P.533 A) The date the maturity of this bill was 24-10-1923 and Mr.Mavlanka . to meet it on that day.

Sales agency of the sandal oil was in the meantime ured by Essenflours with effect from 1-9-1923. A sum f £ 5,220 due by P.Astiers for oil sold on 14-9-1923 as er Invoice No.3 was payable on 1-11-1923 (Ex.P.137 H, E ssenflour personal ledger of P. Astier page 12). After ealisation, the proceeds of the bill were not credited to outts & Company, and the fact that it was not so credited as also known to the Head Office at Mysore (See.Ex.P.137 A). n the Essenflour Journal (P.201) at page 190 (Ex.P.201 C) thus sum is shown as paid to Mr.Mavlankar. In the ledger relating to sundry persons' accounts, thus sum received rom P.Astier is shown on 30-6-1924 as due by Mr.Mavlankar Ex.P.336 G) so also in the General Ledger at page 292 (Ex.P .42). The Essenflour draft for £.4,000 abovementioned, fell ue, as already stated on 24-10-1923. On that date Mr. Mavlankar had only a credit balance of £ 660-8-8 in his bank, the National Provincial Bank (Ex.P.668), and a debit

balance

balance of £ 514-4-11 in another bank of his, the Westminister Bank (Exhibit D.173). It is admitted that they were tne only two Banks in which Mr. Mavlankar had his banking accounts. To meet the above draft he had either to draw upon his credit with his bankers, or pu sufficient money into his Bank, or pay cash.

Astier's Bill was collected by the National Provincial Bank an the amount was debited in Mr. Mavlankar's account on 5-11-1923, (P. 568 B); but on 24-10-1923, the date on which Essenflour's draft matured a sum of £ 4,000 was placed by the National Provincial Bank to the credit of Mr. Mavlankar, and with this sum the Essenflour draft was met. During this period it is admitted that Mr. Sitharamachar was in London. (Mr. Sitharamachar sailed from Bombay to London on the 28th July 1923 (Exhibit P. 329), and reached London probably in the 3rd week of August 1923. He left for Paris on 20th August 1923 (Exhibit D. 86 and P. 707, and returned to London on 23-10-1923 (Exhibits P. 708 and P.74), on the 16th November 1923 he left for New York (Exhibit D.23) and returned to London sometime before the 15th February 1924 and left London back for India on the 15th July 1924 (Exhibit P. 345).

In Exhibit P. 329 dated 23-7-23 Mr. Mavlankar wrote to Mr. Vardhamaniah stating that he had noted that the latter drew on him for £ 4,000 and that Mr. Sitharamachar would speak to him about the same; he assured Mr. Vardhamaniah, at the same time, that the draft would be duly accepted, when presented. As a matter of fact it was accepted when presented. The amount realised from P.Astier was admittedly not credited in Coutts' accounts.

(2) The 2nd item relates to a sum of £. 3,000/- withdrawn in July 1924.

While Mr. Seetharamachar was in London Mr. Vardhamaniah with the knowledge and consent of the former, drew on behalf of the Essenflour Products, a bill for £. 3,000/- dated 9-4-1924 at 90 days sight on Mr. Mavlankar, payable to the order of the Bank of Mysore (Exhibit P. 334 B). The bill was sent to the Mysore Bank for being discounted, and the proceeds credited to the account of

the Essenflours. The Bank of Mysore did so, (Vide Exhibit P. 334 C). The draft became due about the 29th of July 1924. To meet this draft Mr. Mavlankar drew from Coutts & Company

£.	753	- 7 -	4	on 23-7-1924
£	2,246	-12-	8	on 28-7-1924
£.	3,000	0	0	Total.

(Vide Coutts Weekly sheet P. 276 and P. 277)

Mr. Mavlankar has entered both the withdrawal from Coutts and payment to Essenflour, on 29-7-1924, in his half-yearly account sent to Mysore. In the Journal ~~xxxx~~ of the Essenflour Products, on page 73, these two amounts are shown as having been paud to Mr. Mavlankar by Coutts and Co., on 23-7-1924 and 28-7-1924, respectively (Vide Exhibit P. 136 G.) In the Ledger of the Sandal Oil department of the Essenflour these sums are entered against Mr. Mavlankar, at page 100, on 18-8-1924 and - - 25-8-1924, respectively (Vide Exhibit P. 336 D.)

(3) The 3rd item relates to a sum of £. 6,101-18-9 also of Astiers.

During Mr. Sitharamachar's stay in London Mr. Vardhamaniah after consulting him and getting an answer in the affirmative, drew on behalf of Essenflour two drafts each for £ 3,000/- at 90 days sight on Mr. Mavlankar payable to the order of the Bank of Mysore (Vide Exhibit P. 334 D and E). These drafts were made on 8-7-24 and were sent to the Bank of Mysore for the proceeds, after collection, being credited to the Essenflour accounts (Exhbbit P. 346), and the Bank ~~xxxxxxxxx~~ agreed to do so (P. 348). The drafts matured on 29-10-1924 and Mr. Mavlankar had to find funds for meeting the same on the due date. It has to be noted that unlike the drafts for £ 4,000 and £ 3,000 referred to above, these two drafts for £ 3,000 each were not discounted with the Bank of Mysore, but were given to them only for collection.

As per Invoice No. 144 dated 18-6-1924 sandal oil was sold to P. Astier for £. 6,105 on that date (Exhibit P. 349). In Mavlankar's half-yearly statements (Exhibit P. 208) this sum is shown as collected in October. In the same statement a sum of £ 6,000/- is shown as cash paid to Essenflour on 29-10-1924. In P. 709 dated 6th December 1924, Mr. Mavlankar says that he collected and utilised Astier's bill for meeting the said two drafts of £ 3,000 each. As a matter of fact

the amount due by Astiers was received by Mavlankar on 25th August 1924. This amount has been entered as paid in his cash ledger. (Exhibit P. 560 A).

In the Essenflour Journal of the 25th September 1924 this sum of £. 6,101-18-9 was credited to suspense account and Mavlanker was debited with the sum (Vide Exhibit P. 136 H).

(4) The last item relates to Mr. Vardhamaniah's drafts of -- £. 4,000/- ~~(xxxxxx~~ (£. 2,000/- each).

On the 11th of May 1925 Mr. Mavlankar cabled to Essenflour as follows:-

"Essenflour owes us £ 5000/-. Can you draw three months upon us and remit wire proceeds discounted bill through another Bank."

(Vide Exhibit D. 226).

In reply to this cable Mr. Sitharamachar wrote a personal letter on the 14th of May 1925 stating that Mr. Cox remitted to him £. 4,200 and odd, and that that sum together with the sale proceeds of Thymol etc., would more than cover the £ 5,000/- asked for. (Vid Exhibit D.111 = P. 592).

Not having received any reply cablegram, Mr. Mavlankar telegraphed again on the 16th of May 1925 stating:-

"Anxiously await reply to my telegram.
Depend upon remittance £. 5,000".

Mr. Sitharamachar sent a telegram dated 18th May 1925 i reply:-

"Total amount £. 22,000/- (overdue) as at 18th April. Remittances since then £. 7,000/-. Outstanding amount £. 15,700/-. You could remit at least 10,000/- 10th Ma Mr. Cox telegraphs remittance of £. 4,200/- to your account. Cannot understand your telegram. Remit at l £. 10,000/- immediately".

(Vide Exhibit D. 224).

On the 12th of June 1925 Mr. Sitharamachar cabled to Mr.

"We shall remit £. 3,000/- 17th
instant * * "

(Vide Exhibit 592 A- B)

On the 17th of June 1925 Mr. Vardhamaniah drew two drafts £. 2,000/- each payable at 60 days m sight on Mr. Mavlanker. The drafts were discounted at the Mysore Bank and the proceeds viz., 52,512-13-0 were distributed thus:-

(1) Rs. 41,500- 0-0 draft on Madras Bank.

(2) Rs. 10,986-14-0 credited to the account of the Mysore Asbestos Company.

(Vide Exhibits P. 607 D -- sterling Cheques purchase register of the Mysore Bank -- P. 617 and P. 603 A

The draft on the Bank of Madras was equal to in sterling currency £ 3,000/- In Exhibit P. 660 telegraphic advice was given on the 23rd June 1925 to Mr. Mavlanker that the £. 3,000 were remitted through the Central Bank of India, Madras by Mr. Vardhamaniah. On or about the due date of the said drafts a sum of £. 3,000/- was ~~xxx~~ withdrawn from Coutts & Company on 5th September 1925 and credited to the Westminister Bank.

(Vide Coutts Weekly sheet Exhibit P. 92).

On the same date Mr. Mavlanker met the two drafts of Mr. Vardhamaniah.

(Vide entry in Mr. Mavlanker's account, Westminister Bank, Exhibit D. ~~xx~~ 173).

It may be noted that on the 31st of August 1925 a telegram was sent to Mr. Mavlanker:-

"You could draw £. 3,000/- from Coutts
and credit it our account with you.
This is commission due to us."

(Exhibit P. 518).

In the account current for the period July 1925 to December 1925 sent by Mr. Mavlanker, on the debit side a sum of £. 4,000 is shown as cash paid to Essenflour and on the credit side a sum of £. 3,000/- as cash received on September 7. September 4 is obviously a mistake for September 5 (See Exhibit D. 173).

Though £. 3,000/- was withdrawn from Coutts & Company on the 5th of September it was credited to Mavlanker's account in the Westminister Bank only on the 7th of September.

The prosecution case is that as the Mysore Bank had declined to give accommodation to the Essenflour on account of their heavy indebtedness, the said two drafts of £ 2,000/- each were made nominally by Mr. Vardhamaniah, but they were really meant for the Essenflours and that was the reason why they were met by withdrawal from Coutts & Company.

The defence case is that the drafts were personal to Mr. Vardhamaniah and had nothing to do with the Essenflours. It was suggested before us that as the peal necklace and diamonds belonging to Vardhamaniah were still left unsold with Mr. Mavlanker, he drew upon Mavlanker in order to recoup himself by this means the value of the same.

ITEMS SUBSEQUENT TO THE PERIOD OF CHARGE.

(1) The first relates to a withdrawal of £. 3,000/- on 15-3-1927

On behalf of the Essenflours Mr. Sitharamachar drew a bill on 17-12-1926, at 60 days sight, on Mr. Mavlanker for £. 3,000/-. The due date of this draft was 15-3-1927. (Vide Exhibit 607 E). On 23-12-1926 Essenflours wrote to Mr. Mavlanker adivising him that a draft for £. 3,000/- had been drawn on him at 60 days sight, that Mr. Sitharamachar would wri to him regarding this, but that in the meantime the bill might kindly be accepted (Exhibit P. 360). On 10-1-1927 Mr. Mavlank sent a reply stating that the bill would be accepted and that he would await further particulars regarding the same from Mr. Sitharamachar (Exhibit P. 361). On 15- 3-1927, the date on which the draft matured, it was met by a withdrawal from Coutt & Company (Vide Coutts' weekly sheets Exhibit P. 363). This withdrawal from Coutts & Company and credit to Essenflour are all entered in the Essenflour Cash Book and ledgers, as also in the sandal oil ledger against date 18th March 1927. (Vide

Exhibit 672 A). Mr. Mavlanker wrote to Mr. Sitharamachar on 7-4-1927 regarding Coutts' accounts ~~xxxx~~ thus:-

With reference to Coutts' accounts for the week ending March 18th, you will notice that £ 3,000/- have been drawn; this was done to pay the draft you drew and which I accepted on your behalf".

(Vide Exhibit P. 362).

In Exhibit P. 517 dated 14-4-1927, Mr. Sitharamachar referring to the said sum of £. 3,000/- withdrawn from Coutts says that ~~xxxx~~ in Coutts' statement of 15-3-1927 there is a payment of £. 3,000/- to the National Provincial Bank, and though he knew what this was for, he would have to give a different explanation on the lines suggested therein.

(2) The next item relates to the draft for £. 2,500/- dated 20th July 1927.

A draft for £. 2,500/- was drawn by Mr. Sitharamachar on 20-7-1927 on behalf of the Mysore Development Syndicate. (Exhibit P. 532), on Mr. Mavlanker payable to the order of the Bank of Mysore. The proceeds of this draft, viz., ~~xxxxxxxx~~ Rs. 32,953-11-0 were credited in the M.D.S. account in the Bank of Mysore (Mysore Branch) on 22-7-1927 (Vide Exhibit P. 568, credit entry against date 22-7-1927 and Exhibit P.582 debit and credit slip.) On the same date a cheque was issued by Mr. Sitharamachar on behalf of the M.D.S. in favour of D.N. Subba Rao, Prosecution Witness No. 9 (personal clerk of Mr. Sitharamachar) for Rs. 15,000/- on the Bank of Mysore, and the proceeds of this cheque were paid to the said Subba Rao in cash and currency notes (Vide Note on the back of Cheque Exhibit P. 583). On 26-7-1927 another cheque for Rs. 21,200/- was issued by Mr. Sitharamachar, on behalf of the M.D.S. in favour of the Manager of the Bank of Mysore, Mysore Branch (Exhibit P. 584) with instructions to issue a draft for the amount, in favour of Mr. Sitharamachar or order, on the - -

Imperial Bank, Madras (Exhibit P. 586). A draft was accordi ly made not on the Imperial Bank but on the Eastern Bank Ltd. Madras -- It is immaterial on which Bank the draft was made for the purpose of this case -- for the said amount (Vide Exhibit P. 586). Witness Subba Rao took both the draft and the proceeds of the cheque for Rs. 15,000/- to Madras and se therefrom a TT. on 27-7-1927 toMr. Mavlanker for £.2,379-3-4, the receipt whereof was duly acknowledged by Mr. Mavlanker o 28-7-1927 (Vide Exhibits P. 596)B.C. and D.) The original draft for £. 2,500/- made on 20-7-1927 was met by two withdrawals from Coutts & Company.

(1) £. 1,400/- on 10-11-1927.

(2) £. 1,100/- on 26-11-1927

(Vide Coutts' Sheets Exhibit P. 590).

In the Essenflour Ledger and the Journal of sandal oil accounts, debits and credits of these two sums were made agai date 29-11-1927 as sums withdrawn by Mr. Mavlanker from Coutt & Company (Vide Exhibit P. 417 H and P. 672 B and C).

(3) The next item relates to a draft for £. 1,250/- made on ~~xxxx~~ 15-9-1927.

On behalf of the Mysore Development Syndicate a draft for £. 1,250/- dated 15-9-1927, at 90 days sight, was drawn by Mr. Sitharamachar on Mr. Mavlanker payable to the order of the Bank of Mysore (Exhibit P. 414). The proceeds of the draft, viz., Rs. 16,308-8-6 were credited to the M.D.S. with the Bank of Mysore on 19-9-1927 (Vide Bank's statement of account Exhibit P. 568), and also M.D.S. Cash Book (Exhibit P. 415 A.) On the same day a cheque was issued by Mr.Sitharamachar on behalf of the M.D.S. for Rs. 16,500/- in favour of S.B. Pandit Prosecution Witness No. 3, Cashier and Accountant for payment to one Mr. Pitchaiya Naidu as advance for Mica consignments sent to London

(Vide

(Vide Exhibit P. 415 B), a concern which was personal to Mr. Sitharamachar. The draft was met by Mr. Mavlanker by two withdrawals from Coutts:-

(1) £. 1,200/- on 18-2-1928

(2) £. 50/- on 21-2-1928

(Vide Coutts' Weekly sheets Exhibits P. 418 and P. 419 of those dates and also Exhibit P. 417 A and B.)

On the 18th February 1928 Mr. Mavlanker put £. 1,179-7-6 into Coutts' & Company's accounts (See his Pass Bokk of Westminister Bank Exhibit P. 172 and Coutts' sheets Exhibit P. 419), in order to enable him to draw on that date £. 1,200 from Coutts & Company.

(4) The last draft is one for £. 2,500/- dated 21-12-27.

On the 21st of December 1927 Mr. Sitharamachar on behalf of the Essenflours drew a bill on Mr. Mavlanker, at 90 days after sight, for £. 2,500/- payable to the order of the Bank of Mysore (Exhibit P. 427)- This draft was sent on the same day to the Bank of Mysore for being discounted and the proceeds credited to the Essenflour account. (Vide Exhibit P. 658 = P. 428). The Mysore Bank did so, and credited the sum of Rs. 32,432-6-11 being the equivalent of £. 2,500/- to the Essenflour Account on 22-12-1927. Mr. Mavlanker as usual put £. 2,474-7-6 into Coutts on 18-4-28, drew therefrom £. 2,500/- on the same day and met Mr. Sitharamachar's draft (Vide Pass Bokk of Mr. Mavlanker with the Westminister Bank D. 172 against date 18-4-1928 and Coutts Sheets Exhibit P.430½. In the Essenflour accounts these transactions are entered in the same way as the other similar transactions already referred to had been entered.

The statement appended, hereto, gives at a glance the same comprised in the 12 items above mentioned, by whom the sums were requisitioned, the dates on which the requisitions were made or bills drawn, the dates of withdrawal from Coutts & Co., and the dates of remittance or bills honoured.

Amount.

	AMOUNT.	By whom requisitioned.	Date of requisition or bill drawn.	Date of withdrawal from Sandal Oil a/c.	Date of remittance or bill honoured.
Charge period (TT).	1. £1,138-13- 5	Essenflour.	7- 1-1926	9- 1-1926	9- 1-1926
	2. £1,500- 0- 0	Asbestos	23-2-1926	27- 2-1926	27- 2-1926
	3. £2,000- 0- 0	Asbestos	28-4-1926	3- 5-1926	4- 5-1926
	4. £5,600- 0- 0	Essenflour	26-6-1926	29- 6-1926	29- 6-1926.
Before charge (drafts).	5. £4,000- 0- 0	Essenflour	29-6-1923 (Due date 24-10-1923)	24-10-1923	24-10-1923.
	6. £3,000- 0- 0	Essenflour	9-4-1924 (Due date 29-7-1924)	23- 7-1924 & 23- 7-1924	29- 7-1924.
	7. £6,000- 0- 0 (2 drafts of £3000/-each)	Essenflour	8-7-1924 (Due date 29-10-1924)	29-10-1924	29-10-1924.
	8. £4,000- 0- 0 (2 drafts of £2000/-each)	Mr.Vardhamaniah	17-6-1925 (Due date 5-9-1925).	5- 9-1925	5- 9-1925
After charge (Drafts).	9. £3,000- 0- 0	Essenflour	17-12-1926 (Due date 15-3-1927).	15- 3-1927	15- 3-1927
	10. £2,500- 0- 0	Mysore Development Syndicate.	20- 7-1927 (Due date 17-10-1927).	10-11-1927 and 26-11-1927	29-11-1927
	11. £1,250- 0- 0	Mysore Development Syndicate.	15- 9-1927 (Due date 18-2-1928	18- 2-1928 and 21- 2-1928	18- 2-1928
	12. £2,500- 0- 0	Essenflour	21-12-1927 (Due date 18-4-1928).	18- 4-1928	18- 4-1928.

It may not be out of place to mention here, the system of maintaining accounts, both at the head offic at Mysore and the Branch Office at London; and certai other matter relevant thereto. The Essenflour Produc Ltd., had its registered office in Mysore. Mr.M. L. Vardhamaniah was, as already stated, its Governing Director and Chairman. Mr. Sitharamachar was elected as an additional Director and also as the Managing Director of the Company by a resolution passed at a meeting of the shareholders on 12-8-1922, (Exhibit P.(At an extra-ordinary general meeting held on 23-7-192 and confirmed on 23-8-1923 the borrowing powers of th Directors was raised to Rs.5 lakhs. By a special resolution passed at the general meeting held on 17-1 and confirmed on 3-12-1923 the Directors were authori from time to time to determine the person or persons should be authorised to operate on their banking acco In accordance with the said resolution the Board of Directors at a meeting held on 5-12-1923 resolved that Messrs. Vardhamaniah, Governing Director, B.Sitharamachar, Managing Director and K. B. Mavlanker, correspondent in London, be authorised to operate on the banking account opened with Coutts & Company, London. The special resolution passed on 17-11-1923 was telegraphed to Coutts & Company on 19-11-1923 (copy communicated to Mr.Mavlanker also) and it runs as follows:-

> "Essenflour General Meeting passed Resolution altering article 84 delegating powers to Board of Directors of appointing person or persons to operate banking account Board's resolution - authorising B. Sitharamachar and K.B. Mavlanker to operate account with you will be sent next mail please transfer amount to Mysore Government

account under instructions of either Sitharamachar or Mavlanker on authority of this telegram".

As regards accounts to be maintained by the Agents, the agency agreement provided in para 5 thereof that the Agents should keep in good order books of accounts of all oil consigned to them and of all sales, receipts, payments and other transactions connected with the same. The Agents should also submit true and complete accounts regularly at the end of each month of all transactions effected during the month.

Mr. Narasinga Rao, Prosecution Witness No.1, Director of Sandal Oil factories has stated in the course of his deposition that the Agents were required to submit monthly accounts of stocks and sales. The sales account showed the stock on hand, oil received in the month, oil sold and balance. The other account (sales account) showed the sales effected during the month detailing the quantity sold to each person, the rate of price and the amounts realisable. The sales account showed the total value of sales during the month, remittances effected to Coutts & Company during the month, expenses incurred on account of sales, commission claimed by the Agents for the sale, and finally the total outstandings due to Government at the end of each month.

To the same effect is the evidence of Bhavani-sankara Rao, Prosecution Witness No.14, Head Accountant of the Sandal Oil factories. He states that soon after the Essenflour were appointed Agents, Mr. Sitharamachar called on the Director and ascertained the names of - customers and the system of accounts maintained during the agency of Messrs. Wiffin & Sons, and that Mr.Sitharamachar was asked to submit accounts similar to those submitted by

by Wiffin & Sons. He has stated that they were getting from the Essenfleur products sales report, account sales and summary of expenses in the same manner in which they were getting formerly from Messrs. Wiffin & Sons and that they were also getting statements of collections and statements of outstandings.

Mr. K.R. Krishnaswami Iyengar, Prosecution witness No.4, Deputy Comptroller who audited the account relating to the London sales maintained at the Head Office Mysore, found that the Agents were maintaining separate ledger account for the London sales. The Agents were getting weekly statements of account from Coutts & Company as regards the London sales, and they were getting monthly account sales and sales report from Mr. Mavlanker. In addition, the Agents were getting periodically usually once a half year or a littl longer from Mr. Mavlanker a statement of account current which comprised not only transactions relating to sandal oil, but also to other transactions between Essenfleur Products and Mr. Mavlanker. The Agents were getting their accounts of sandal oil prepared at Mysore from these returns and accounts.

The evidence of Mr. K.T. Sundara Rao, Prosecution Witness No.2, the accountant of Essenfleur Ltd., is also to the same effect. According to him, the Essenfleur office maintained at Mysore

(1) Stock Book,

(2) Journal,

(3) Columnar ledger (compiled on the information furnished by Coutts & Co., in their weekly statements of total amounts credited to and withdrawn from the Essenfleur sandal oil accounts each month, as well as the amounts

amounts transferred from Essenflour sandal oil account to Government Royalty account).

(4) General Ledger containing entries in the Cash Book and the Petty Cash Book.

(5) Cash Book (in which the bills discounted with the Mysore Bank and the credit of the proceeds thereof are also entered).

(6) Petty Cash Book showing sundry expenses, such as travelling allowances, telegram and postage charges, etc., etc.,

(7) Personal Ledger.

the London Office, Mr. Mavlanker kept Cash ledger, ;sonal ledger, Bills Book, Invoice Book, Journal and it is known in Mr. Parthasarathi's evidence as Inter-..ption Book. These books contained all the details which under clause (5) of the agreement the agents were called upon to maintain. They also contain all the materials which would enable the agents to submit, as indeed they were required to do, true and complete month accounts of all transactions effected during the month, from them it was possible for the agents to show all details respecting sales, the stock of oil received, disposed of, and remaining on hand, payments received with dates of receipts, remittances to Messrs. Coutts & with dates, and the amounts outstanding..

From the deposition of Mr. Srinivasaraghavan Prosecution Witness No.19, Superintendent Loans Section, Mysore Bank, Bangalore, it would appear that the Essenfloure had, with the Bank of Mysore.

(1) A current account opened on 30-6-1925 and still continuing:

(2) Property loan account;

(3) Produce loan account opened on 25-6-1925;

and (4) Cash credit account for some time and then stopped.

The books at London, if carefully examined, will show how much of the sandal oil collections was remitted to Coutts & Co., how much was left outstanding with the customers, how much of the collections was utilised for meeting drafts ~~x~~ from Mysore and for sending remittances to Mysore and lastly how much money out of the sale realisations was with Mr. Mavlanker. Similarly if the books kept at Mysore are looked into, it could be ascertained, how much money was withdrawn from Coutts & Co., and sent to Mysore, either by TT. or used for meeting drafts drawn on Mr. Mavlanker, and what other remittances were also received here.

What was possible for Mr. K.R. Krishnaswami Iyengar to do here, and what was possible for Mr.Parthasarathi to do in London in January 1929, might have been done even in the years 1924 or 1925, or 1926, if one had reason to suspect that all was not well with the Essenflour, in the matter of what was represented to be heavy arrears of outstandings due by the customers in Europe.

Before dealing with the specific items included in the charge and the other collateral matters relied upon by the prosecution it is important to bear in mind the financial position of the allied companies, during this period (1923 to 1926). From the statements, annexed hereto, of the assets and liabilities, excluding the bleak account of the Mysore Development Syndicate and the

two

two allied concerns the Essenfleurs and the Asbestos, it will be seen that this group was working at great loss, and the financial position was shaky. At the time the sandal oil agency had been successfully negotiated about the end of June 1923, both the Essenfleurs and the Asbestos owed :

Rs.3,78,609- 0- 0	to Mysore Bank	
Rs.1,35,979-15-10	to others.	
Rs.5,14,588-15-10	Total.	

losses = Rs.96,448-0-4.

By the 30th June 1924, the position became worse. Their liabilities were :

Rs.5,23,842-1-7	to Mysore Bank	
Rs.7,20,711-6-7	other liabilities.	
Rs.12,44,553-8-2	Total.	

losses = Rs.1,94,554-6-9.

On the assets side they had oils :

At factory	..	39,401-3-0
With Agents, (both America & England).		1,81,812-2-6

besides raw materials of the value of Rs.59,895-15-4 and Asbestos of the value of Rs.56,300-0-0.

The book debts of both the Companies, considered good, amounted only to Rs.5,86,431-2-1.

This situation was well realised by Mr.Sitharamachar. In his letter Exhibit P.344 dated 26-6-24 written from London to Mr. Vardhamaniah, he says :

"I am looking into the Essenflour state of affairs. I have before me your letter C.L.109-22 of the 22nd May. The situation is really very distressing; we have large stocks of clove and patchouli oils and there is no movement at all. Prices are low. We always have been most - unfortunate in regard to rates. Whenever we keep stocks, the prices of those oils slump and when we sell the oil in bulk, prices go up. For instance there is an unusually large enquiry for cardamom oil and this is a very strange thing indeed. We have sold our stocks at 80 to 85 but now there is no oil on the market, so much so that if we had the same oil in our hands now, we would realise 95 per lb. Who knows that if we had held on, to our misfortune prices would have dropped.

"However, the Essenflour situation has broken my heart and I am not sleeping well. It is no doubt true that my worrying about it and losing sleep will not mend matters: but yet I have been thinking of all sorts of ways and means to improve the situation but must confes ve not succeeded so far.

"The one bright spot in the horizon is the sandal business, but even there, all the commission earned ken away by me and Messrs. Mavlankar and Cox. I hop at Government will be magnanimous in view of the good rk done by us to contribute a moiety of my expenses."

In the years 1925 and 1926 the state of affairs s getting worse and worse. By the end of June 1926, s liabilities amounted to

Rs. 7,69,309-11-10	to Bank and others
Rs. 9,56,081- 6- 5	other liabilities.
Rs.17,25,390- 2- 3	total.

As against this book debts considered good were - Rs.11,71,618-6-6. The value of stock oil and raw material came down to Rs.93,139-8-10, and out of the stock the value of the oil that was with the agents was only - Rs.22,689-10-6. The cash balance on hand and with the Bankers (including Coutts) was Rs.5,820-8-2.

The total losses up to 30-6-1926 were Rs.1,71,151-11- to which the losses of the Mysore Development Syndicate amounting to Rs.13,953-12-0 have to be added.

In such a hopeless condition in which the concerns were, it is no wonder that on 5-6-1925 the Mysore Bank asked Essenflour to "carefully note that no future overdraft could be allowed in the Company's cash credit drawing account" (Vide. Exhibit 144).

Pressure on the one side and helplessness on the other drove Mr. B.K. Garudachar, one of the Directors, to write to Mr. Vardhamaniah in the following strain :

"No letters from you. Hope Mr. Hariyanna has sent you a confidential letter received by me from Mr. Rose, demanding to close the accounts before the 24th instant. This is already 10th of the month. I don't know what you have thought over. The matter is worrying me much. Somehow or other, I have become very nervous. Please do the needful.

"Regarding Essenflour and Asbestos, the interest amount alone will come to about forty-five thousand a year. I don't know how you have thought over this. It is a matter of great concern". (Vide Exhibit P.145 dated10-6-25).

"I get an information (rather reliable) that there is a movement to put an interpellation in the next meeting of the legislative Council, about the advisability of continuing the agency of sandalwood oil to Essenflour Products. You may take this information to what it is worth. If there is any truth, it is better to settle the accounts of the Bank before the next legislative Council in the best interest of the Company. You know better.

"To my personal mind, I feel that our own doing (i-e. beyond our financial means,) has lead to all these things. It is now too late to think overit. Better late than never. I am sure you will not misunderstand me for my plain ~~xxx~~ talk and writing". (Vide Exhibit P.146 dated 26-6-1925).

The financial position between the Head Office at Mysore and Mr. Mevlanker as on 31-12-1925 on all accounts :--

I. **Amount alleged to be due from Mr.Mavlankar to Essenflour.**

(1)	Difference between Government a/c and sundry persons a/c as on 31-12-1925.	£	775-15- 6
(2)	Cash balance at Coutts as on 31-12-1925.		599- 7- 3
			1,375- 2- 9
	Less excess credited to Government a/c and withdrawn on 16-1-1926		630- 0- 0
	Balance.		743- 2- 9
(3)	Asbestos sale amount ..		1,105- 1- 9
			1,848- 4- 6
(4)	Withdrawal from Coutts on 5-9-25 and 11-11-25 which the prosecution contend as utulised to meet Mr.Vardhamaniah's draft for £.4,000/-.		4,000 - 0 - 0
			5,848- 4 - 6

Amounts due to Mr.Mavlankar from the Head Office on 31-12-25 on several accounts.

(1)	Balance due to Mr.Mavlankar as per Exhibit P.210.	£	2,936- 9- 10
(2)	Payment to Mr.Tommie's draft (Exhibit P.686 and P.687)		1,134-12- 8
	Total	£	4,071- 2- 6

Progress

Progress Statement showing liabilities and assets from the commencement of business up to 30-6-1926 as disclosed by the Balance Sheets (contained in Exhibit P.149 (Journal).

THE MYSORE ASBESTOS PRODUCTS CO., LTD.

	Liabilities.			Assets.			
	Secured and Unsecured.		Other Sundry creditors, etc.,	Book debts.	Stock.	Cash on hand or with Bankers.	Loss as per profit and loss account.
On 30-6-1922	Bank of Mysore Overdraft (Secured	100000-9-11	19,659- 9-11	13,296-12- 4	Raw materials 24966-14-10 -do- at Mines. 10293- 1- 4 Total 35260- 0- 2	17472-5-1	24087- 8-10
On 30-6-1923	Bank of Mysore (a) Loans secured on assets.. (b) Unsecured	80000-0- 0 50000-0- 0	11,380-15-10	8,513- 5-11 (of which 712-12-0 considered doubtful)	Raw materials 43453- 5-10	1972-3-4	32916- 7- 9
Total		130000-0- 0					
" 30-6-1924	Bank of Mysore (a) Loans secured on stocks.. (b) Unsecured	50998- 8- 0 126388-13- 9	19,293- 6- 9	15,929- 5 - 5 (of which 1,912-12-0 considered doubtful).	56,300-0- 0	568-1-2	47760- 6-10
Total		177387- 5- 9					

30-6-1925	Bank of Mysore Loans ...	170184- 4- 0	63,223-15- 2	14,287-13-11 (of which 2,312-12-0 considered doubtful)	51,032-15-0	459-8-3	48145-11- 5	
30-6-1926	Bank of Mysore Loans...	400000- 0- 0	84,125- 2- 9	31031-11- 7 and 2,312-12- 0 considered doubtful).	35,404- 8- 0	654-9-2	32426- 6- 5	

Total loss up to 30-6-1926 Rs. 1,80,336-7-3

Progressive statement showing liabilitims and assets from the commencement of business up to 30-6-1926 as disclosed by the Balance Sheets (contained in Exhibit P.201 (Journal).

(1) ESSENFLOUR PRODUCTS Ltd.

	Liabilities.			Assets.			
	Secured and unsecured.	Other sundry creditors, etc.,	Book debts.	Stock.	Cash on hand or with Bankers.	Loss as per Profit and Loss account.	
On 30-6-22	Bank of Mysore (a) Produce loan 100000-0- 0 (b) Overdraft 25007-5- 6 Total 125007-5- 6	79199- 5 -4	12742- 2- 1	Oils: Finished products 15836- 2- 6 In transit 19987- 0- 0 With Agent. 36000- 0- 0 Sample. 2609- 5- 6 Raw materials 45091-13-10 Total 119524- 5-10	838-15- 5	17961- 6- 10	
On 30-6-23	Bank of Mysore (a) Secured in stocks 198609-0- 0 (b) Unsecured loan. 50000-0- 0 Total 248609- 0-0	124599- 0- 0	4233- 2-10	Oils : at factory 67475-12-0 With Agent 40425- 5-0 In transit 12860- 0-0 Sample 2612- 6-6 Raw materials 96562-13-0	46007-9- 3	20483-10-11	

30-6-24.	Bank of Mysore (a) Loans secured (b) Loans unsecured. Total	295913- 1- 6 50542- 4- 4 346455- 5-10	701417-15-10	570034-11-11 (Good) 500- 0- 0 (doubtful) 2379-12-9 (due by the Directors)	Oils: At factory With Agents Sample Raw Materials Total	39401-3-0 181812-2-6 2631-8-6 59895-15-4 283740-13-4	29263-11-9 (of which Rs.27817-15-1 was with Coutts),	51445-15-7
30-6-25	Bank of Mysore (a) General Loan (b) Produce Loan	175192-12- 0 175192-12- 0	718776- 2-11	763939- 1- 4	Oils: At factory With Agents Sample Raw materials Total	35286- 8- 0 40141- 3- 9 2960- 8- 1 8389- 0- 3 86777- 4- 1	15472-8-1 (of which Rs.12922-10-11 was in the Coutts)	57838-14-
30-6-26	Bank of Mysore (a) General Loan (b) Produce Loan Total	81209-12- 4 39194- 9- 7 120404- 5-11	871956- 4- 5	860886-10-11 (good) 500- 0- 0 (doubtful)	Oils: At factory With Agents Sample Raw materials Total	17271- 8- 0 22689-10- 6 2960- 8- 1 14813- 6- 3 57735- 0-10	5165-15-0	23421-12-
	(2) Asbestos Products Ltd. Total	128500- 0- 0 248904- 5-11						

Toral loss up to 4-6-26. Rs.1,71,151-11-10

MYSORE DEVELOPMENT SYNDICATE.

Pages 118 and 119 of the Ledger.	Losses upto 30-6-1925 ...	Rs. 14,480-15-2	
	Since upto 30-6-1926 ...	" 6,751- 0-3	
		Rs. 21,231-15-5	
	Net loss brought down ..		Rs. 18,953-12-0
Page 121.	Loss from 1-7-1926 to 30-6-27 (1926-27) ..		20,980-15-4
	Loss from 1-7-1927 to 31-12-27 ..		5,820- 4-7
	Total loss upto 31-12-1927 ..		Rs. 45,754-15-11

We shall now proceed to deal with the specific items included in the charge, and the other items relied upon by the prosecution as relevant under Sections 14 and 15 of the Evidence Act. The argument of the learned counsel for the appellant was that though there were only four items which formed the subject matter of the actual charge, the prosecution filed accounts and documents relating to the affairs of the Essenflour from the date of its incorporation up to the date of the charge, and of the other allied concerns also for a like period, and that the accused was really called upon to account and answer not only the four specific charges, but from 1-9-23 to 31-12-26, for all acts done not only by himself but by the late Mr. Vardhamaniah, and by Mr. Mavlanker (since dead), on behalf of the Essenflour and other concerns and in their personal capacity. In other words, though the amount alleged to have been misappropriated by the appellant during the charge period is only £7,000/- and odd still he was virtually asked to account for and be answerable for a total misappropriation of something like £65,000/- alleged to have been made by him and by other persons. To be more precise, evidenc has been let in regarding four specific items of misappropriation before the period of the charge, and four other items relating to a period subsequent to th charge period. It is strenuously contended before us that in permitting evidence in proof of the collateral or subsidiary charges to be led in the same way as evidence had been allowed to be adduced in proof of the main charge, the lower Court has not only misconceived the scope of Section 15 of the Evidence Act, but has also misapplied it. It is urged on behalf of the prosecution, that evidence of similar transactions

was permissible under Section 15, to prove that the transactions referrable to the charge formed part of a series of similar acts, all traceable to a deliberate course of conduct pointing to a particular knowledge or intention, and not due merely to an accident or mistake. In dealing with this subject the learned Magistrate has observed at pp.22 and 23 of the print book that "if there were only one or two stray - instances of overdraft on sandal ~~xxx~~ oil monies then it would be very difficult to impute dishonesty to the accused without collateral evidence as the overdraft might be explainable as due to mistake or accident The circumstances of the case therefore cast a - responsibility on the prosecution to adduce collateral evidence of dishonesty and rebut the probability of innocence. Section 15 of the Evidence Act is intended to apply to such cases". To the statement of the law stated in this manner, the counsel for the appellant has no objection, but his case, as we understand it, is not that he utilised the sandal oil monies owing to any mistake or accident, but he did not ask and indeed had no knowledge that at the time he asked for - remittances from Mr. Mavlanker or issued drafts on him that sandal oil monies should be or would be drawn upon, to meet his demands. It is argued that one of the essential ingredients which the prosecution has to affirmatively establish, in proving the main charge framed against the appellant being, that he dishonestly misappropriated or converted to his own use or - dishonestly used the four items comprised in the charge, or wilfully suffered any other person so to do, the prosecution must first prove dishonest - intention by proof aliunde, and not by proof of other

acts in which dishonest intention is discernible, or may be inferred. That in any event, there is - neither similarity of circumstances, nor proximity of time, in regard to the items before and after the charge period, and those comprised in the specific charge. It is pointed out that there could be no similarity of occurrence between [illegible]hamaniah's drafts and Mr. Sitharamachar's drafts, or between drafts made on behalf of the Essenflour Products and and the Mysore Asbestos Products or the Mysore - Development Syndicate, and that there could be no proximity of time between what occurred in 1923,1924 and 1927, and what occurred during the charge period. Indeed the item relating to Mr.Vardhamaniah's draft for £4,000/-, made on 29-6-1923 was even before the sandal oil agency commenced. Another distinction was also sought to be drawn to disprove similarity of occurrence, and that is, that whereas during the period of the charge the remittances were asked for by telegraphic transfers, the remittances before and after the said period were made by honouring drafts made at 60 or 90 days sight on the due dates.

Sections 14 and 15 have to be read together, since section 15 is only an application of the general rule laid down in section 14.

Section 14 runs thus:-

"Facts showing the existence of any state of mind such as intention, knowledge, good faith, - negligence, rashness, ill-will or good-will towards any particular person, or showing the existence of any state of body or bodily feeling, are relevant, when -

the existence of any such state of mind or body or bodily feeling is in issue or relevant.

Explanation 1 -- A fact relevant as showing the existence of a relevant state of mind must show that the state of mind exists, not generally, but in reference to the particular matter in question."

Section 15 says:-

"When there is a question whether an act was accidental or intentional, (or done with a particular knowledge or intention) the fact that such act formed part of a series of similar occurrences, in each of which the person doing the act was concerned, is relevant."

The case law both English and Indian bearing on the point is very full, as may be seen from the references given in the judgment of the lower Court. So far as the principles underlying Sections 14 and 15 are concerned, there is no difference between the English law and the Indian law. In Makin Vs. Attorney General for New South Wales, 1894 A.C. 57, their Lordships of the Privy Council have laid down the principles which must govern the admission of evidence of similar transactions under provisions similar to those of Sections 14 and 15. At page 65 the Loard - Chancellor who delivered the judgment of the Privy Council has summerised those principles thus:-

"In their Lordships' opinion the principles which must govern the decision of the case are clear, though the application of them is by no means free from difficulty. It is undoubtedly not competent for the prosecution to adduce evidence tending to show

that the accused has been guilty of criminal acts other than those covered by the indictment, for the purpose of leading to the conclusion that the accused is a person likely from his criminal conduct or character to have committed the offence for which he is being tried. On the other hand, the mere fact that the evidence adduced tends to show the - commission of other crimes does not render it - inadmissible if it be relevant to an issue before the jury, and it may be so relevant if it bears upon the question whether the acts alleged to constitute the crime charged in the indictment were designed or accidental, or to rebut a defence which would otherwise be open to the accused. The statement of these general principles is easy, but it is obvious that it may often by very difficult to draw the line and to decide whether a particular piece of evidence is on the one side or the other."

The other English cases bearing upon the question have all been referred to by Sir Asutosh Mookerjee J. in 42 Cal.957 at 997. The learned Judge has summarised the principles deducible from these cases thus:-

> "Facts similar to but not part of the same transaction as the main fact are not in general admissible to p either the occurrence of the main fact or the identity of its author. But evidence of similar facts although in general inadmissible to prove the main fact or the connection of the parties therewith is receivable, after evidence aliunde on these points has been given

to

to show the state of mind of the parties with regard to such fact; in other words, evidence of similar facts may be received to prove a party's knowledge of the nature of the main fact or transaction, or his intent with respect thereto. In general whenever it is necessary to rebut, even by anticipation, the defence of accident, mistake, or other innocent condition of mind, evidence that the defendant has been concerned in a systematic course of conduct of the same specific kind as that in question may be given. To admit evidence under this head, however, other acts tendered must be of the same specific kind as that in question and not of a different character, and the acts tendered must also have been proximate in point of time to that in question

The same principle has been re-stated more fully and affirmed by the same learned Judge in the Full Bench case reported in I.L.R.47 Cal.571 at pages 691 to 696. Particular attention is drawn to the observations of Kennedy J. in Rex vs. Bond, 1906 2 K.B.389. At page 405 the following passage occurs:-

> "The admissibility, not merely the weight, of the evidence depends upon the evidence which it is proposed to adduce being evidence of such conduct as would authorise a reasonable inference of a systematic pursuit of the same criminal object".

See

See also 16 Bom. 414, 83 I.C.889, 36 Cal. 573 and A.I.R.1928 Lahore 382. We do not think that the correctness of the principle stated in the above cases has been disputed in any other case to which our attention was drawn, and we think it is needless to refer in detail to those cases. The result is that evidence of a similar transactions may be - admissible as evidence of intention or knowledge but not evidence that the accused committed the offence with which he is charged. In other words, where the intention of the accused is a relevant fact, evidence of similar transactions both prior and subsequent to the alleged offence is admissible as evidence of intention.

We may state that if, in speaking of the proximity in point of time, the learned Judge in 42 Calcutta 997 meant to say that if the similarity of occurrence are somewhat detached from the occurrence forming the subject matter of the charge, evidence of similar transactions even for the limited purpose for which it is otherwise relevant is inadmissible, we must say with due respect that the proposition is stated a little too broadly. In this connection the observations of Lord Ellenborough in Rex Vs. Whiley cited by Telang J. in 16 Bombay at page 431 are apposite:-

> "True it is that the more detached the previous utterings are, in point of time, the less relation they will bear to the particular uttering stated in the - indictment; and when they are so distant, the only question that can

can be made is whether they are sufficient to warn the Jury in making any inference from them as to the guilty knowledge of the prisoners; but it would not render the evidence inadmissible".

The learned counsel for the defence laid particular stress on Mr. Justice West's decision in Reg. Vs. Parbhudas, (11 Bombay High Court Reports 90,) as supporting his contention. In that case it was held that evidence of similar transactions ought to be excluded from consideration as affording proof of the subject of the trial. There is no inconsistency between this decision and the other rulings cited above. Indeed as pointed out by Telang J. in 16 Bombay 414 at page 433, Mr. Justice West himself held in Queen Empress Vs. Nur Mahomed, I.L.R. 8 Bombay at pages 225-226 that Parbhudas's case was not applicable in respect of some similar evidence when tendered in proof of guilty knowledge or intent.

In these circumstances it is incumbent on the prosecution to establish how far the offence with which the appellant is charged is brought home to him by proof aliunde before calling into aid, by the application of Sections 14 and 15 of the Evidence Act, evidence of similar transactions both prior and subsequent to the alleged offence, for the purpose of its being taken into consideration as a piece of relevant evidence in proving the knowledge or intention of the appellant, -- such knowledge or intention is a relevant fact in proving the offence with which he is charged.

And this brings us to the most important issue in the case, viz., whether the appellant dishonestly misappropriated, or converted to his own use, or dishonestly used, or wilfully suffered any other person to so use, the four items in question of withdrawals from the sandal oil collections during the charge - period, in violation of the terms of the contract between the Essenflour and the Government.

To constitute the offence, the misappropriation, conversion or use of these items must be dishonest, and it will be dishonest if it is done with the intention of causing wrongful gain to one person or wrongful loss to another (Section 24 of the Indian Penal Code); i.e. with the intention to cause gain or loss by unlawful use of moneys to which the person gaining is not, and the person losing it is, legally entitled (Section 23 of the Indian Penal Code). If therefore at the time of misappropriation, conversion, or use the appellant knew that to the moneys withdrawn from Coutts he was not legally entitled, or that they belonged to another person who is legally entitled to the same, and the consequent gain or loss is brought about by unlawful means, then the act of misappropriation, conversion or use so committed may be taken to have been done dishonestly. In this case the sandal oil money with Coutts is Government property. Essenflour has no right to use the same except to the extent required to cover the commission earned and the expences incurred. If what is left over and above the commission and expenses is drawn upon for appropriation or use by the Essenflour without the knowledge of Government, then, the means employed for withdrawal being unlawful, the gain to the Essenflour and the loss to Government are both

both wrongful. No further proof to establish dishonest intention is required. The question for consideration in these circumstances is whether the appellant is proved to have had such dishonest intention.

We have little doubt that all the four requisitions for telegraphic remittances were met by Mr. Mavlankar from out of sandal oil collections sent to Coutts & Company and withdrawn therefrom. Did the appellant know they were going to be so met ? These items may be dealt with separately one after another.

(1) £1,138-13-5.

It is admitted by Mr. Nageswara Iyer that there is no direct evidence on record proving that the appellant asked Mr. Mavlanker to meet this draft from out of the sandal oil collections, but it is contended, that the materials placed before the Court warrant an inference to that effect being drawn. The financial position of Essenflours on 31-12-1925 was most discouraging, as may be seen from the progressive statement of assets and liabilities appended hereto. The stock of oil both with the American and London Agents on that date was valued at Rs.44,770-0-0 (Exhibit D_8). The amount due to Mr. Mavlanker was £2,936-8-10 (Exhibit P.210). The balance to the credit of Essenflour towards commission, expenses etc., with Coutts is £775-15-6 (Exhibit C(6)). There was neither a ready nor a profitable market for the stock of oil, with the London Agent. It is not ascertained how much of this stock was with the London Agent. It is therefore obvious that Essenflours had not money enough in London to meet the draft for £1,138-13-5.

It is argued on behalf ot the appellant that e may not have known the exact state of the financia position of Essenflours at London, on 31-12-1925 as the half-yearly accounts current for July 1925 to 31-12-25 had not been received till long after the said draft was made. From the previous half-yearly accounts (Exhibit P.209) for January to June 1925 it is seen that on 30-6-1925, Essenflours owed Mr. Mavlanker £.3594-8-2. The stock of oil with the agents on that date was not on only Rs.40,141-3-9. Essenflour account with Coutts account was known from Coutts Weekly Sheets received regularly at Mysore. The account sales and the monthly accounts would also give an idea of the business done in sandal oil, the commission earned and the expenses incurred. Apart from this, Coutts weekly sheets, as already stated, show that on 9-1-26, the date on which the remittance was sent, a sum of £1,138-13-5 was withdrawn by Mr. Mavlanker from Sandal Oil account. In the sandal oil Ledger and Journal kept in Mysore Coutts is credited and Mavlanker debited with this amount on - -12-1926, and the account submitted to Government was n accordance with this debit. It is argued on behalf f Government that even assuming without conceding that r. Sitharamachar had no knowledge that his demand would e met by withdrawal from Coutts & Company, he should ave known on the 8th February 1926 that it was so done nd he took no steps to inform Mr. Mavlanker that he - ught not to have used sandal oil monies for meeting ssenflour draft. From all these circumstances it is rged that the irresistable inference was that the ppellant was aware of the misuse of sandal oil collectio

for an unauthorised purpose, and that at any rate having come to know of it, he connived at it.

It was contended on behalf of the appellant that Mr. Sitharamachar was attending only to a higher class of work and was not attending to accounts which he had left entirely to the accountants in the office that he was not therefore in a position to know at any particular time whether there was any overdrawing and that he had no knowledge at the time he requisitioned for money that no money was due to Essenflour by th London office or from the sandal oil collections by way of commission and expenses. It was further urge that the appellant expected that his drafts would be met out of Essenflour monies or by Mr. Mavlanker himself supplemented by monies due to Essenflour on account of commission and expenses, and that he came to know of the unauthorised withdrawals from sandal oil monies only in October 1926. The prosecution, on the other hand, drew the attention of the Court to a number of letters written by the appellant to show that he was carefully scrutinising the accounts and statements and that the statements of accounts sent by Mr. Mavlanker were carefully scrutinised by him before they were passed on to the office and that sometimes they were not even passed on to the office but were returned to Mr. Mavlanker for being revised in accordance with the instructions conveyed by him.

The documentary and oral evidence on record proves beyond any doubt that the accused was carefully scrutinising all accounts and statements, even to the minutest details. Exhibit D.89 dated 9-4-1925, shows that

that he used to check the weekly statements of Coutts with the previous delivery notes. Exhibit P.509 dated 5-8-1925 is a letter explaining the various statements sent to the Director of Sandal Oil Factory. Exhibit P.516 which is a personal and confidential letter addressed to Mr. Mavlanker on 5-8-1925 shows that the accused used personally to check and - scrutinise all the statements of accounts received from Mr. Mavlanker before passing them on to the Office Exhibit P.318 and Exhibit P. 138(t) show that the accused was keeping himself informed of the various resources of the Company, and on the 31st August 1926 he knew from the accounts that the Essenflour had to its credit a sum of £3,000/- as commission due from the sandal oil sales, and immediately asked Mr. Mavlanker to draw the sum from Coutts & Company. Exhibit Ex 512 and 511 dated 9-6-1925 and 20-11-1925, Exhibit D.58 dated 11-12-1925, Exhibit P.235 dated 12-11-1925, Exhibit P.236 dated 11-12-1925, Exhibit P.33 dated 10-2-1926 which are letters dictated by the accused and addressed to the Director of Sandal Oil Factories, show that he was carefully going over the accounts, and explaining the various items, whenever explanations were necessary in respect of the delay in collections, or the outstandings or the period of credit given to certain customers personally. The last letter shows that he was checking the account sales with Coutt's statements received every week from London. Exhibit D.51 dated 23-10-1924 which is a letter addressed to K.B. Mavlanker and dictated by the accused himself shows that even minutest differences were being noticed by him. In that letter, a difference of - - £1/- in the expense under telegram debitable - -

to

to Government was noticed, and his mistake was corrected. Similarly a difference of £18-2-3 in the commission payable to Mavlanker was noticed and reduced. Exhibits P.529 and 530 dated 20-8-1925 show that invoices were being scrutinised by the appellant and returned to Mavlanker for being corrected and prepared afresh and sent in accordance with the instructions contained therein. In Invoice No. 676(Exhibit P.69 dated 28-12-1926, the appellant has instructed the office in what months account it should be inclu before passing it on to office.

Now turning to the oral evidence, we find it stated by K.T. Sundara Rao (Prosecution Witness No.2) that Mr. Sitharamachar was attending to foreign correspondence and that he, the witness, was acting under his instructions. Mr. Sitharamachar was readi the correspondence and giving instructions about further action. Mr. Sitharamachar used to give the witness the accounts and correspondence, and the witness used to prepare the accounts according to his instructions (page 115 of the paper book, lines 42 to 45).

M.C.Lakshmipathiah(Prosecution Witness No.7) has stated that all foreign tappals were being attended to by Mr. Sitharamachar after his return from London and by Mr. Vardhamaniah when Mr. Sitharamachar was abroad. The office was not opening foreign tappals. Out-going correspondence of general nature would be attended to by him, the witness, and those relating to accounts by Mr. Sundara Rao. All important outgoin correspondence would be attended to by Messrs. Vardhama nian or Sitharamachar. Mr. Raja Rao and Mr. Krishnier gar were the typists. The witness used to send all letters for issue to the despatcher Mr. Narayana Rao.

Replies

Replies to foreign correspondence would be dictated by Messrs Vardhamaniah or Sitharamachar and the fair copies sent to the office for despatch. There used to be confidential and personal letters. The witness used to register and despatch the confidential letters and give the files to Mr. Vardhamaniah till Mr. Sitharamachar's return and thereafter to Mr. Sitharamachar. There were some confidential and personal letters which were not passing through him (the witness).

Mr. Raja Rao (Prosecution Witness No.8) the Steno-typist has deposed that the letters bearing his initials M.R. typed indicated that it was he that typed. and the letters bearing M.R.S. indicated that they were typed by him to the dictation of Mr. Seetharamachar.

In these circumstances the conclusion that Mr. Sitharamachar was quite aware of the financial condition of all his concerns personally and was not leaving everything to his accountants seems to be irresistable.

£1,500/-

The contention of the appellant's counsel is already indicated in connection with this item in another part of our judgment where it has been specifically dealt with. It is argued that there was ample Mica and Asbestos with Mavlanker and that having regard to the realizations from these articles annually, the appellant might have expected, that the draft would hav been met. Exhibit P.678(=D.141) shows that the first consignment of Mica was sent from India only on 10-3-26; the quantity consigned was 3540 lbs. and

at the prevailing market rate could not have fetched more than £177 even if the whole quantity had been so immediately on receipt at the end of April. As a matter of fact, however, no Mica was sold prior to 11th September 1926 when only a small quantity was sold for £10-10-0. The second consignment of 6877 lbs could not have reached London before the end of June 1926. Even if it did, the sale did not take place till 21-11-1926 and the small quantity sold realised only £6-11-10. The value of the whole consignment, at the then current rate would not have exceeded - £343-17-0. The stock of Mica cannot therefore be considered to be a fund sufficient enough for meeting the heavy drafts drawn on Mr. Mavlanker. At any rate there was no Mica with Mr. Mavlanker when the accused asked Mavlanker to remit £1500/- and £2000/-.

As regards Asbestos, it is seen from Exhibit P.680, that between 29-5-1924 and 19-7-1926, about 20 tons of Asbestos only had been consigned. On 21-10-25, 276 bags of Asbestos were consigned per S.S. 'Manchi'. The consignment reached London about - 9-12-1925 (Exhibit D.131). In the account of January 1926 it is shown that it realised net £786-7-3(Exhibit D.124). Exhibit D.134 shows that there was a sum of £327-6-3 to the credit of the Mysore Asbestos Company on 15-8-1925, and this with £786-7-3 =£1,105-1-9 was to the credit of the Mysore Asbestos with Mr. Mavlanker at the end of January 1926. There is a difference of £69-14-11 between the figure in Exhibit D.123 and that in Exhibit D.134, but that is not of material - importance for the present purpose. The appellant had however given specific instructions to Mr.Mavlanker to remit the proceeds by telegraphic transfer to the Bank

of Mysore,Ltd., to the account of the Mysore Asbestos Products Company. In Exhibit D.35 dated 17-12-1925, the appellant writes : "Please remit the proceeds to the account of the Mysore Asbestos Products Compan., Ltd., by T.T. Please don't mix up the Asbestos Products Company account with the Essenflour Produc.s Ltd., in future". On the 17th December anothe. letter (Exhibit D.36) was sent to the similar effec. confirming a telegram of the previous date : " As we have ceased drawing on you, I request that all proceeds from Asbestos and Mica be sent to us immediately by T.T. ..... Don't mix up these account with - Essenflour accounts". Exhibit D.37 dated 31-12-1925 which is a reply to Exhibit D.35 shows that till then Mr. Mavlanker had not sold the Asbestos shipped per S.S. Ranchi. In his letter Exhibit P.38 dated 21-1-26 the Appellant has again asked Mr. Mavlanker to remit the proceeds by T.T. to the Bank of Mysore to the Asbestos account. The evidence of K.T. Sundara Rao printed at page 139 shows how the sale proceeds of Asbestos was separately recovered by that Company. (See also Exhibits D.40, D.41 and D.43). Assuming that Mr. Sitharamachar bona fide believed that he could draw upon the Asbestos account at London, as there was to his credit a sum of £1,105-1-9, still when Coutts' sheets and Mavlanker's monthly accounts were received he knew that the draft was met not from sale proceeds of Asbestos, but by withdrawal from sandal oil accounts (vide P.136(M), P.138(g) and (h) and P.180A, all dated 2-3-1926. There is nothing upon record to show that he took Mavlanker to task for taking money from Coutts & Company to meet Asbestos draft. There was in these circumstances the less justification for again asking for a remittance of £2000/- on 28-4-1926.

£2,000

£2,000/-

Whatever has been said as regards the 2nd item of £1,500/- applies with equal, if not greater force, in respect of this sum of £2,000/-. That this sum was also taken from sandal oil accounts and remitted, was known at Mysore on 24-5-1926 (Exhibit P.136(c), P.201(f) and P.534(a)).

£5,600/-

It is claimed for the prosecution that in reference to this particular amount Mr. Sitharamachar expressly asked Mr. Mavlanker not to remit the £5,000/- to Coutts as per P.689, but to utilise it towards the £10,000/- which he had called for in his cable of 26-6-1926 and that Mr. Mavlanker complied with his request (Exhibit P.597 A-B and C-D). It may be noted in this connection that a letter (Exhibit P.662) was sent on the 10th of June 1926 by Mr. Sitharamachar to Mr. Mavlanker in which he stated :--

> I write this again to request you to see that £10,000 are remitted to the account of Mr. M.L. Vardhamaniah, Central Bank of India, Madras, before the end of this month. The matter is really urgent and important and I leave it to you to manage it. Cable me at once addressing Sithar in Code. The amount will be remitted back before September end "

This amount was later on split into two portions (1) £5,600/- for Essenflours and (2)£4,400/- to the personal account of Mr. Vardhamaniah as per Exhibit P.597A.

It is argued that in this instance Mr.Sitharamacha gave clear instructions to Mr. Mavlanker not to remit sandal oil collections to Coutts but to remit them to Essenflour and Mr. Vardhamaniah to meet their requiremen and that Mr. Sitharamachar knew that Mr. Mavlanker was remitting £5,600/ out of sandal oil collections, and tha there was no room for any doubt, for on 30-6-26 debit an credit was made to Mr. Mavlanker and Coutts and Company in the Essenflour account at Mysore (Vide Exhibit P.138L).

The contention of the defence is two fold. The fir is that the telegram Exhibit P.597 "Do not remit realisati to Government this month Stop Remit first week July and th subsequent weeks. Await letter now in post" has nothing do with another telegram of the same date Exhibit P.597A, asking for a remittance of £10,000 (£5,600 to Essenflour and £4,400/- to Mr. Vardhamaniah). The letter in post is not produced. The prosecution alleges that it is not forthcoming, and the defence states that it is suppressed. Nor are the confidential letters of Mr. Sitharamachar to Mr. Mavlanker acknowledged in Exhibit P.597 forthcoming. Assuming for a moment that P. 597C has nothing to do with P.597A, let us read P.597A, P.597B and P.597(g) together. It is obvious that in response to the requisition for £10,000/- Mr. Mavlanker said that a sum of £5,600/- would be remitted to Essenflour instead of £5,000/- to Government, as already advised, but that he would not be able to find funds to remit £4,400/- to Mr. Vardhamaniah. Mr. Sitharamachar however would not take that excuse, but he was tenacious, and wanted that Mr. Mavlanker should strain his utmost resources and telegraph £4,400/- to Mr.Vardhamaniah's credit in the Imperial Bank, Bangalore. This Mr.Mavlanker did not do or could not do.

The other suggestion made by the defence counsel was that in Exhibit P.689 Mr.Sitharamachar merely asked Mr. Mavlanker not to remit realizations to Government in the month of June but to do so from the first week of July and in the subsequent weeks, and it is urged that this was done after consulting Mr. Y. Narasinga Rao and receiving his approval. It is admitted that to support this theory there is no direct evidence placed before the Court. Mr. Narasinga Rao was questioned in this matter:

Question: In the course of a conversation between you and Mr. Sitharamachar towards the end of June 1926, did you suggest to him during the course of the conversation that the collections in the last week of June might be credited in the first week of July?

Answer: I don't remember any such conversation. We had friendly conversations generally about the sandal oil business matters from time to time.

In re-examination Mr. Narasinga Rao has deposed to certain facts (see page 111 lines 16 to 28 of the paper book) from which he infers that he could not have suggested to Mr. Sitharamachar the putting off ~~xx~~ of the only remittance of £5,000/- cabled to him on the 25th of June to the following month. In Exhibit P.39 dated the 22nd September 1926 addressed to the Essenflours Mr. Narasinga Rao states, among other things,

"We find that a sum of £5,000/- advised to have been remitted to Coutts in London

~~cabled~~

> >able dated the 25th June) has not
> >ppeared in the accounts for the month of June and has evidently been taken as having been actually credited - during the month of July and has ac - cordingly appeared in the accounts for the month of July. This explains the difference between the remittances cabled/ in July and the amount shown i: the accounts as actually remitted. W do not understand why the remittance advised on 25th June has not appeared in the accounts for the month. We shall be glad to have this point cleared."

The point does not appear to have be at any time. Both the prosecution and the defence rely upon the above extract in support of their respective contentions, the prosecution relying upon it to show that if Mr. Narasinga Rao was a party to the arrangement suggested by the defence he would not have asked the point to be cleared, and the defence relying upon it to show that Mr. Narasinga Rao was evidently satisfied that the amount cabled in June was actually credited during the month of July, and had appeared as a matter of fact in the accounts of that month. There is no doubt a credit to Government in Coutt's sheet of £5,000/- on the 24th of July, but it has to be noticed that Astier's bill of £7,256-5-0 was credited to Coutts & Company on the previous day. Whether this sum of £5,000/- credited on the 24th July to Government is the same as the £5,000/-cabled on the 25th June is not clear. The prosecution

contend

contend that Mr. Nafasinga Rao having asked Mr. Sitharamachar in his letter of the 7th of May 1926 that the whole of the amount due should be collected and credited before the end of June as Government were anxious that every effort should be made to collect as much of the heavy outstandings on account of the sandal oil business in London as possible, it is very unlikely that he would have been a consenting party to the postponement of the remittance as suggested by the defence. The defence counsel invited our attention to Exhibits P.703, D.157 and D.158 as showing that Mr. Narasinga Rao was in the habit of accommodating the Essenflours in treating deliveries made in one month as deliveries made in the following month. In Exhibit P.703 Mr. Sitharamachar writes:

> "It is obvious that Mr. Mavlanker has included the delivery of 12,495 lbs. in the December accounts with a view to bring up the total deliveries to a decent figure. We feel that he could not have delivered the oil during the last week of December, and even if he has actually sent out the cases from his godowns, the bills and other documents relating to the consignment would have been sent only in the 1st week of this month. The net result will eventually be the same and we therefore have telegraphed to you today as follows:-- "Delivery 12,495 is for January. Please see letter in post."

In a personal letter of the same date Mr. Sitharamacha has elaborated his reasons for the said 12,495 lbs. being treated as delivery in January instead of in December. In Exhibit D.153 dated the 15th January 1927 Mr. Narasinga Rao accepted the suggestion of I Sitharamachar in the circumstances explained in the latter's official letter of the 7th January 1927 ar treated the delivery as having been made in the mor of January. From this correspondence it is not ea to infer that the suggestion in regard to the remittance of £5,000/- on the 25th of June 1926 was allowed to be postponed to the following month:

The position may be summarised thus:

(1) From the financial position of the Esser flours and the allied concerns as may be gathered f their books of accounts maintained at the Head Offi it is obvious that they had not funds enough, apart from the sandal oil sale proceeds, to meet their demands for T.Ts.

(2) Assuming that the exact position was not known when the first requisition was made on 7-1-1926 for £1,138-13-5, it is clear that by 8-2-1926 when the entries were made in the sandal oil journal and ledgers crediting Coutts and debiting Mavlanker with the said sum it was known that sandal oil monies had been withdrawn and utilised. No steps were taken to find out from Mavlanker why the draft was met out of sandal oil monies.

(3) About a fortnight after these adjustments were made, a second demand was made, for a remittance of £1,500/- on 23-2-1926, by T.T., and no instructions were given that sandal oil monies should not be

utilised for this purpose. Indeed even when, by the 22nd March 1926 the withdrawal from Coutts & Company was known, and book adjustments made, no attempt was made to giving any admonition to Mavlanker against the procedure he was adopting. On the other hand, [illegible] action was acquiesced in.

(4) The same thing was done in respect of the 3rd T.T. for £2,000/- called for on 28-4-1926. With the knowledge that the Asbestos Company could not operate on the sandal oil monies, the adjustments were made in the books of accounts in respect of the 2nd and 3rd T.Ts., without a word of protest, at or about the time of adjustment, or even when the next call for remittance was made.

(5) Finally, the last demand (during the charge period) was made on 26-6-1926, with the knowledge that sandal oil monies instead of being remitted to Government account as advised was to be diverted to meet this demand.

(6) During the whole of this period of six months, the financial position of Essenflours was becoming worse and worse, with no resources to fall back upon, and with the credit absolutely shaken.

(7) In the returns sent to Government the fact that sandal oil monies were withdrawn and utilised by Essenflours was not disclosed.

(8) From the oral and documentary evidence, to which detailed reference has already been made, Mr. Sitharamachar is proved to have had complete knowledge of the accounts and foreign correspondence, and it is not easy to accept the suggestion to the contrary.

We think, in these circumstances, there is ample justification for the inference that there has been a dishonest conversion of the sandal oil monies for the use of Essenflours and Asbestos products, and that the conduct ofthe appellant in respect of these transactions renders his ignorance thereof highly improbable. After all the question of intention is not one which is capable of direct proof but must be inferred from the surrounding circumstances and the conduct of the accused. Failure to account to Government for the monies proved to have been withdrawn from the sandal oil proceeds, or giving an untrue account as to its use is, as Mayne says in page 659 of his Criminal Law (4th edition), a strong piece of circumstantial evidence in a case of criminal breach of trust.

Now as regards the several items before and after the charge, we are of opinion that for the reasons already mentioned the evidence relating them cannot be made use of for proving the charge itself; but it can be used for showing that by systematic course of conduct conversion of sandal monies for the use of Essenflours was either authorised or permitted, and this for the purpose of rebutting any inference that the utilisation on the occasion question was made in ignorance of the fact that were sandal oil monies either at the time of the remittance from London or of the actual conversion thereafter.

In considering the previous and subsequent items, to the limited extent to which they may be regarded as relevant, we think we must exclude

item

item of £4,000/- paid to honour the two drafts of £ 2,000/- each drawn on Mr. Mavlanker by Mr. Vardhamaniah The draft were Mr. Vardhamaniah's It may be that by taking into account the history of this transaction the fund out of which this draft was met on the due date came out of s ndal oil monies., but it was thought, whether rightly or wrongly, that a sum of £3,000/- could be withdrawn from Coutts as commission due to senflour on sales of sandal oil, and utilised for meeting the draft. In Exhibit P.516 Mr. Mavlanker was asked to treat the sum of £4,000/- as a personal loan to Mr. Vardhamaniah. Assuming that there was a secret understanding between Mr. Vardhamaniah and Mr. Sitharamachar to use the former's credit for helping the Essenflours, still it is Mr. Vardhamaniah that is the primary debtor, and the subsequent adjustment of accounts between him and Essenflours, in regard to t sum, or for the matter of that, even an anticipated adjustment in the manner in which it was carried out will not make the transaction, whatever the civil liability may be, a similar occurrence for purposes of Section 15 of the Evidence Act.

But the remaining items stand on the same footing as the charge items. The fact that in the precharge period it was Mr. Vardhamaniah that drew the drafts, and in the postcharge period, Mr. Sithamaramachar drew two drafts on behalf of the Mysore Development Syndicate, so far as the purpose for which the evidence relating to them is sought to be used, does not make any material difference. The transactions are similar to those that occurred during the charge period. We are not called upon to hold and we think that we cannot even express any opinion in this case that the appellant

is guilty or not guilty in respect of transactions other than those covered by the charge period, because he is not tried in this case for these offences.

We shall now proceed to deal briefly with the other evidence relevant to the matter in issue. Mr. K.R. Krishnaswami Iyengar states in the course of his deposition that in the course of his audit he found out by actual calculation that on certain dates when fairly big amounts were drawn from the sandal oil account other than for transfer to the Government account, the total amount so withdrawn up to that date was in excess of the amounts due to the Agents on account of the commission and working expenses till then. In very many cases he was able to connect the heavy withdrawals from Coutts & Company with corresponding amount either sent by Mr. Mavlanker to Mysore or for meeting drafts drawn on Mr. Mavlanker by Mr. Sitharamachar or Mr. Vardhamaniah. The amounts received at Mysore, he says "enabled the Agents to reduce their overdrafts on the Mysore Bank or discharge loans due by them to the Mysore Bank, or to make payments to the allied concerns, the Mysore Asbestos Company, and the Mysore Development Syndicate. The accounts that he audited related particularly to the London sales.

Speaking of the 1st draft for £4,000/- dated the 29th June 1923 duly honoured on the 24th of October 1923, Mr. Mavlanker says:

> "This draft was not on account of any liability of mine. This seems to be a draft for accommodation drawn upon me for their convenience to meet

their requirements. As such I was not liable to accept or pay the draft. But in business when a draft is drawn upon a man who has no liability to pay, the drawer provides funds to meet the draft. I understood the liability to pay thinking that I had time to sell their goods or that they would send funds. Unfortunately nothing like that happened and when the due date approached, I became very uneasy. My business and capital were very small. Mr. Sitharamachar was there (London) at that time. I had to speak to him myself as he did not speak to me himself about the matter. I asked him as to how the draft should be met. For a sandal oil sale in France with P. Astiers we had his acceptance for over £5,000/- and on consulting Mr. Sitharamachar he suggested that we should discount that acceptance. I am referring to Invoice No. 885 for £5,222-18-0 of which £2-18-0 was for bill stamp. English Banks do not generally discount foreign acceptances and in this particular case the drawers, viz., the Essenflour Products Company, were unknown to my Bankers, viz., the National Provincial Bank. Mr. Sitharamachar and I went to the Bank and explained the position of the drawer and the drawee. Since I was an old customer they agreed to advance money, or to discount the bill,

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I don't remember which. Anyhow, the money was received and paid on the due date. Mr. Sitharamachar advised me to take an advance or discount the bill. In Exhibit P.208, I have referred to the receipt of £5,220 and the debit of £4,000"

Mr. Mavlanker has been questioned again in regard to the general instructions given to him by Mr. Sitharamachar before he left London for Mysore and this is his answer:—

"Mr. Sitharamachar had given me instructions to withdraw monies for Teaenflour as commission and expenses were due to them. I was not to draw upon the account for other purposes. Mr. Sitharamachar had again given me permission to draw monies as in the case of commission and expenses from time to time for other purposes as well. Just when he left he had given me instructions to draw monies from the account for a purpose which was not strictly connected with sandal oil business. * ** *** There were general instructions given to me about withdrawals under certain circumstances. The instructions were that whenever I had no funds of Teaenflour to meet their drafts, I might draw from the sandal oil monies to meet the drafts. * * * When Mr. Sitharamachar asked me to draw from sandal oil monies for other purposes it did not occur to me to tell him that that was not correct."

At page 199 of the paper book he adds:-

"Whenever no money was available with me, I have drawn from Coutts irrespective of whether Essenflour had funds to their credit with me. I have identified Mr. Vardhamantah's draft also with those of Essenflour. Sitharamachar's instructions were to draw from sandal oil monies only when Essenflour had no funds to their credit with me. Even when their funds were to their credit with me but not actually then available with me, I drew from Coutts. To this extent, I exceeded his instructions. The instructions were to draw only in respect of the drafts of Essenflour. I understood this all along to meet the drafts of Essenflour and other connected concerns. Even if Mr. Vardhamantah asked for a personal loan I would put this in the Essenflour account. Even if Mr. Sitharamachar or any one through him asked for a loan, I would put it under Essenflour. Even if his son-in-law took money for a Cinema I would put it under Essenflour. In these respects, I deviated from his instructions and used my own discretion.

The defence counsel contended that Mr. Mavlanker's oral evidence was untrustworthy and that his accounts unreliable. It is no doubt true that a person to whom misappropriation from sandal oil sale proceeds is traced to the extent

to the extent of some £.45,000/- or so, is not ordinarily a safe witness to rely upon, unless the documentary evidence, proved to be genuine, supports his oral testimony. As a strong piece of evidence in supert of his evidence, the prosecution relies upon Exhibit P.709, office copy of a letter dated 6-12-1924 stated to have been sent by him to Mr. Sitharamachar, the genuineness of which is disputed by the defence. The important portion in this letter is:

> "When you left, you will remember you had told me that in case any difficulty arose about meeting Essenflour draft, I should draw upon the money from Essenflour's account for sandal oil, just as I had to do once while you were here, and at that time it was Aetter's sum amount which had to be appropriated, as you will perhaps remember.
>
> * * It is very unfortunate, that as on the last occasion when I had to appropriate sandal wood money for the Essenflour purposes, I had to appropriate the bill proceeds of the same firm this time also. The amount of course has been credited to Essenflour account but naturally it does not appear in Coutts' statements".

This is borne out by Coutts Weekly sheets. On4-3-25 this sum of £6,101-18-9 was paid into Coutts, from the sale proceeds of Invoice No.250 dated 28-1-1924 collected on 3-2-1925, vide. Exhibit P. 561A.

I should have very much liked to have squared this matter before the end of the year, but it does not seem now possible. The only way in which this can be managed now at the earliest possible date is that you should draw upon me by a bill for £5,000/- at 8 months after sight and after negotiating this amount through a certain Bank send me the sum of £5,000/- by telegraphic transfer through another Bank at Mysore, and as soon as I receive this amount, I make up the full amount of Aster's bill, viz., £6,000/- and odd by adding some myself here and paying it into Coutts. * * I expect to clear all the overdue outstandings by the end of this year and if I receive the amount of £5,000 from you early in January, it will be possible for me to put the whole account in a perfect order".

Mr. Mavlanker in his evidence given on the 14th of August 1929 referred to the instructions particularised above. It would appear that on that date the prosecution was asked by the Court to produce any correspondence bearing on the point. Mr. Ranajodh Singh, the Superintendent of Police then searched among the mass of unexhibited papers and found therein Exhibit P.709 which was produced in Court the same day. This letter was shown to Mr. Mavlanker and he admitted that it was the office copy of his letter confirming the instructions

the instructions received from Mr. Sitharamachar a
referred to by him in ~~cross~~ cross-examination.

Apart from the intrinsic evidence afforded by the contents of the letter relating to transact
proved by other unimpeachable documentary evidence in the case, there is other evidence from which the genuineness of Exhibit P.709 is established.

On the 12th of January 1925 Mr. Sitharamachar wrote to Mr. Cox (American representative of Essen-flour) (Exhibit D.68) asking him to remit to Mav-lakner a sum of £5,000/- in the circumstances stated by him thus:—

"Some time back we drew on Mr. Malvanker a sum of £6,000 which will mature by the end of February. (This is not true as the draft had already matured and been honoured on 29-10-1924). As the total realisation of sales of our oils in London are not sufficient to cover this draft, and as Mr Mavlanker's commitments are such that he i not in a position to make up the balance, think I have to remit £5,000/- to him. (shows that Exhibit P.709 must have been r ceived by Mr. Sitharamachar; for, it is that letter that a demand for a remittanc of £5,000/- from Mysore is made). This I cannot do for fear that the Bank of Mysor Ltd., will think that we are drawing on e other with a view to get more credit than what we are entitled to, and if Mr. Mavlanker does not honour the draft in

London

London, he will cut a very sorry figure. I am therefore writing this letter to request you to arrange with Messrs. Ungerers to send to London to the account of Mr. Mavlanker a sum of £,5,000/-

* * The reason why I have had to fall back on your help is that it would create a very bad impression if we were to send money to Mr. Mallanker from Mysore or even if he were to ask for extension for payment of the draft. Please treat this as strictly confidential."

It has to be remembered that the draft for £6,000/- referred to in this letter was sent to the Mysore Bank not for discounting but for collection, and therefore the reason given for not discounting the draft and sending the remittance from Mysore does not appear to be true. The true reason perhaps is that the Mysore Bank would not discount Messenflour's drafts with the result that Mr. Sitharamachar was obliged to fall back upon his resources in America.

In Exhibit P. 81 dated the 17th January 1925, the Director of Sandal Oil Factories drew the attention of Mr. Sitharamachar to the longstanding arrears due by Aatiers amounting to £6,101 in respect of Invoice No. 144 of the 18th June 1924. In answer to this Mr. Sitharamachar sent Exhibit P.82 dated the 21st January 1925 in which while regretting that both Messrs. P. Aatiers and Rubeck have been big defaulters, he added that in the case of P. Aatiers it appeared to him that there was some mistake as from some of the correspondence

he had reason to thi ..... aid. He must have known that the amount was paid either from the half-yearly account current from July 1924 to December 1924 or from Exhibit P. 709 in both of which receipt of £6,101-18-9 in respect of Aetter's bill is noted. The half-yearly account was received only on the 6th of April 1925 long after this letter (Exhibit P. 82) was written and Exhibit P.709 was received before this letter was written. It is therefore clear that the information conveyed in Exhibit P.82 must have been derived from Exhibit P.709 and this renders the genuineness of Exhibit P.709 beyond dispute.

On this point Exhibits P. 880, P. 881 and P. 847 also throw some light.

In Exhibit P. 880 dated the 21st February 1924, written from London, Mr. Sitharamachar told Mr. Vardhamaniah that all this week he had been busy looking into the sandal Oil and Beesnflour accounts. After satisfying himself he says he would get them all audited and then send the report.

In Exhibit P. 881 dated the 27th February 1924, Mr. Sitharamachar stated:

> "The third letter of the same date relates to the delay in remitting the realisations from the sales of the sandal Oil to Aetter. At the outset I must tell you that I agree in all that you have said on this question. But yet you are alarmed a bit more than what circumstances justify. Except this one instance there are no others; then

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again if you deduct the commission charges, the freight, insurance, dock and other charges, we incurred on behalf of the Mysore Government, you will see that we have worked out more than £3,000/-"

In Exhibit P. 347 dated the 10th July 1924 Mr.B.Sitharamachar told Mr. Vardhamaniah in regard to the latter's cables on financial matters and to the draft for £6,000/-:

"This is all right. I have gone into all the Essenflour accounts and sandal oil account. I am bringing with me a number of statements prepared specially to my order. This I shall show you and explain the situation."

Our attention has been drawn to certain confidential correspondence between Mr.Sitharamachar and Mr. Mavlanker as affording confirmatory proof of the knowledge which both of them had of the utilisation of sandal oil monies for Essenflour and other connected concerns.

Exhibit P. 516 is a personal and confidential letter dated the 5th August 1925 addressed to Mr. Mavlanker by Mr. Sitharamachar. Mr.Sitharamachar says in that letter:-

"The statement you have sent is such that I cannot pass it on to my office, so that it may be incorporated into our General account for several reasons. These I shall enumerate and request you to kindly

kindly go through them and send me accounts on the lines indicated.

"First of all, the sandalwood oil realisations temporarily utilised by you must be removed, all these have been remitted in full to Coutts & Co., so there is no reason to bring in these items of debit and credit into the Essenflour General Account. If my clerks know that the moneys from sandalwood oil sales were utilised by you to meet our drafts, the matter is sure to leak out and then consequences will be bad. There is already a suspicion in Government circle that some such thing has happened. You will therefore see the need for removing the debit and credits relating to Astiers.

2. "You must also remove the credit of £3,000/- which sum was telegraphed to you in June. Nobody knows this and I don't want the clerks to know it now.

"Mr.Vardhamaniah has drawn on you for £4,000/-; as to how you should meet this will be settled by us soon. In the meantime treat it as a loan for Mr.M.L.Vardhamaniah and send a statement of personal accounts with him.

"The S. K. Mill accounts must be removed. I had written to you often that these should be treated separately but somehow you have not done so.

"In fact I request you to kindly make up the year's accounts on the above lines and send to me typed in duplicate.

"At your end I request you to see that Essenflour General accounts are not mixed up with sandalwood oil accounts. This is important as Government may get the sandalwood oil accounts audited at any time."

Mr.Mavlanker on receipt of this letter and the statement, incorporated the suggestions contained therein in a revised statement and sent the same to Mr.Sitharamachar with his letter Exhibit D.217 dated the 27th August 1925. Mixing up of sandal oil accounts with the general accounts of Essenflour was considered undesirable by Mr.Sitharamachar probably on the ground that if they are kept separate, sandal oil accounts will not show withdrawal by Essenflour therefrom, similarly, essenflour accounts will not show that the money received was the money withdrawn from sandal oil accounts.

In Exhibit P. 528 dated the 7th October 1926 Mr. Sitharamachar drew the attention of Mr. Mavlanker to the fact that sandal oil collections were dangerously in arrears and that he had to infer that he (Mr.Mavlanker) was freely utilising the proceeds for his own finances.

In Exhibit P. 520 dated the 31st March 1927 M Sitharamachar became nervous and wrote as follows:

> "Now in regard to sandalwood oil. The situation according to Coutts statement shows that you have remitted nearly £10,000 less. Whatever the reasons be, I find it impossible to explain things any more. So, please act up to my letter sent registered and which I dare say

say you have received this week. Or, arrange t get two big payments made to your Bankers say from Roger Gallet and Astier and remit these for old arrears. If the payment are made direct to Coutts by these firms, it does no good. I hope you see the point. In any case you must so arrange that the payments to Government account are equal to the realised amounts as noted in Coutts Statements. This is imperative. I have wired to you to-day to some such effect.

"Government are sending auditors here on the 11th and if within that time you fail to make the remittances to Government equal to the realisations I am ruined. Please save me from this position.

"Whatever you do, see that things don't leak out. Please register all letters relating to correspondence of this nature. Government are getting nervous and as the auditors are coming I am having no sleep; blood rushes up to my brain and I feel dreadfully miserable. Do something, whatever it is. Will you telegraph me?

"I have stopped Mica business. Only I have sent 45 more cases. No drawing. No never. I assure you. Save me please."

Within a fortnight thereafter, Mr.Sitharamachar wrote again pointing out the situation in which he was placed and suggesting ways and means for tiding over thus (vide Exhibit P.517 dated the 14th April 1927):

"The situation now is, like this:- The collections made by you as shown in statements sent by you and by Coutts are far in excess of

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the amounts remitted to Government. For instance to the end of December 1926, the total of the amounts paid to the Essenflour account with Coutts for sandalwood oil realisations is £10,000 more than the amount remitted to the Government account. The auditors will ask me why this is so; in fact I am afraid that, if the explanation is not satisfactory, they will say we have misappropriated Government funds. Do you see the point?

"So, I wish to tell them that sometimes, good customers like Astiers ask for extension of time but do not wish that Coutts & Co., should know of it, as then it would reflect on their credit. In such cases, the amounts are paid by you (Essenflour) and withdrawn to your Bank credit. For instance, I refer you to Coutts statement for 5th March 1927. In this a sum of £7,087-10-0 is shown as received by Astier and only a sum of £5,000 is paid to Government account. I explain this by saying that Astiers payment was probably in part. Then again if you will refer to Coutts statement of 15th March 1927, here is shown a payment of £3,000 to National Provincial Bank. I know what this is for, but I shall have to explain this on some such lines as above.

"I therefore request you in future till all arrears are paid off, to see that big payments by such as Astier, Roger and Gallet &c., are paid to your Bankers or any other Bank but not direct to Coutts. The main point is this:-

"The realisations as shown in the right hand column of Coutts statement must equal the remittances;

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any difference that might be should not exceed a thousand pounds either way after providing for expenses and commission.

"If you will see to this, I am saved, and so are you. How you should do this I have indicated, but I leave it to you whether or not you follow the above procedure. Whatever you do please see that none of your office people get to know that there is something fishy about this business. The main thing is this: I want the total realisations to equal to the remittances with not more than about £25,000 due.

"To-day it is nearly £50000. Mr.Ranganatha Rao Sahib who is now the Director of Industries and a member of the Sandalwood Oil Board is keenly watching things and is up x to any mischief."

That Mr.Sitharamachar knew that this sum of £3,000 was drawn from Coutts & Co., to pay Essenflour's draft for £3,000 which Mr.Sitharamachar drew on the 17th of December 1926, is obvious from Exhibits P.672A dated the 18th March 1927 and Exhibit P.362 dated the 7th April 1927.

In Exhibit P.661 dated the 23rd April 1927, a coded telegram to Mr.Mavlanker, Mr.Sitharamachar clearly suggests that later sale proceeds paid by customers should be credited towards earlier arrear due by Essenflour. For he says in that telegram:-

> "Invoice No.717 February 14th. Let Astiers pay your Bank and you credit £8,000 Essenflour account Coutts & Co., as received from you but not Astier."

The following statement will illustrate how Astier's bills were subjected to such manipulations from time to time:-

(1) Invoice No.144 dated 18-6-1924; amount received on 25-8-1924 (£6,101-18-9). Paid to Essenflour on 29-10-1924.

(No receipts from Astiers between 25th September 1924 and 3rd February 1925 for oil sold.)

(2) On 3-2-1925 amount due on Invoice No.250 dated 28-11-1924 of Astiers was collected (£7,338-15-5). Exhibit P.561A.

On 4-2-25, £6,101-18-9 of Invoice No.144 of Astiers credited to Coutts Sandal oil account (vide Coutts' statement, Exhibit P.590).

(3) On 4-3-1925 Invoice No.253 of Astiers dated 16-12-24 was collected (£7,338-15-5). (Exhibit P.561B.)

On 5-3-1925, £7,338-15-5 of Invoice No.250, was credited to Coutts sandal oil account (Exhibit P.308, Coutts weekly statements).

(4) The amount of £7,338-16-5 collected on Invoice No.253 was credited to Coutts account in two instalments:-

(a) £3,669-8-4 on 24-6-25 (Exhibit P.324);

(b) £3,669-8-4 on 30-6-25 (Exhibit P.325).

(There is a payment of £3,000 from Essenflour to Vlanker on 24-6-1925 - vide P.561 C.)

(5) Invoice No.499 dated 6-4-1926 (£14,512-10-0) was collected on 13-4-1926 (P.562 A).

Payment was made to Coutts & Company towards this bill in two instalments:-

(1) £7,256-5-0 on 10-6-1926 (P.131);

(2) £7,256-5-0 on 23-7-1926 (P.590).

(6) Invoice No.508 dated 14-4-1926 for £5,375 was collected from Astiers on 1-5-1926 (Exhibit P562 B) and credited to Coutts on 29-6-1926 (P.133).

On the same day a sum of £5,600 was withdrawn from Coutts & Co., and sent to Mysore Bank Essenflour account through the Eastern Bank.

In Exhibit P.522 dated the 11th August 1927, Mr. Sitharamachar suggested what the immediate thing to be done was, thus:-

"Anyhow the immediate thing for you to do is thi None in your office should know that you have utilised sandal wood oil funds. If this information leaks out, we are ruined. When you want to write me confidentially, you must register the letters for acknowledgment. Whatever letters I write it will be the same.

"2. You must sell oil largely for cash and very early payment in Germany and France. These realisatic might be remitted as for previous arrears. Some such arrangement must be made; otherwise what explanation can I give here. Every day is hell and I am only abl to carry on so long by referring you to people like the Honourable Srinivasa Sastri, Sir M.Visvesvarayya and others. It is only very lately that Mr.Narasinga Rao is getting nervous.

"3. In any case, you must see to it that the total arrears of realisations from sales as advised t over a period exceeding three months.

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This means that in August the arrears must only be for June and July. To-day the situation is desperate. £46,000 was due on 1st July and you have so far remitted £11,000; the balance of £35,000 represents sales of oil during February, March, April. May and June.

"But for my presence here, you would long ago have been in trouble. I am prepared to share your anxieties and burdens but don't be reckless. If by selling largely on the continent, you keep paying up previous arrears, we could carry on for a year like this. God willing, I will then be able to help you substantially. It may be earlier but don't count on it."

In Exhibit P. 523 dated the 28th November 1927, Mr.Sitharamachar again cautions Mr.Mavlanker to note that on no account he should make anybody understand in Mysore that he had paid Essenflour out of sandal oil realisations and that both of them would be in a most disgraceful position if it was now known tha they were utilising sandal oil funds.

In Exhibit P.525 dated the 26th April 1928, Mr Sitharamachar states:-

> "Both of us are landed in a situation which we did not expect and neither of us have utilised the moneys for our personal benefit, but this would not in any way condone the seriousness of the situation. In your recent personal letters and telegrams, you have not mentioned a word about your paying back the money which you promised to pay up in the month of March.

"However, mutual recrimination will not help the situation and I at this end will see that before the end of June that whatever moneys we owe you will be paid up. Please don't enter in your books or correspondence as if you have paid Essenflour from the sandalwood oil account.

"All these however will not count when the one main issue is raised, namely that the realisations of Sandalwood oil instead of being remitted to Government immediately, have been utilised for other purposes - though not my own. In your case, since it is individually owned, the construction would be very bad. Please leave no stone unturned to see that all arrears are fully paid up immediately, and since you handle large quantities of oil and especially in view of the fact that Roger and Gallet and Astiers have bought largely, I cannot see why it should not be possible for you to pay the realisations from this for previous accounts at least and see that large sums are remitted every week and that arrears are low. I need hardly request you to kindly treat this letter as personal".

Within a week thereafter another letter, Exhibit P. 524 dated 4th May 1928, was sent in which some suggestions were made as to how the real position must be concealed. It is stated therein :--

"Please see that the deliveries you telegraph are smaller, at least such as not to swell the arrears.

"In my previous letters I had requested you to see that subsequent payments were set off against this (Astier's dues £2,875/-). In your reply to the Director. you must spin out a plausible story for the

delay

delay in collecting arrears, of course it won't do to say that we have used the funds.

"If Government should take it into their head to send out a man to London to find out if the arrear as shown are true, then we are gone".

Some of the correspondence referred to in the foregoing paragraphs related to certain methods of co cealing the true state of affairs adopted by by Mr. Mavlankar and Mr. Sitharamachar in conjunction with each other. One is that collections from subsequent sales were utilised to adjust the arrears of previous sales amount recovered and wrongfully utilised. Anoth is that the proceeds of sandal oil sales in America were utilised to reduce the deficits in London sales and for recouping amounts withdrawn from the London sale proceeds.

The prosecution have also led in evidence to prove that when the Essenflours found it difficult to make up the dificit found in the sale proceeds of London sales, they drew moneys from America to the extent of £16,000/- to partially recoup the same. The learned Magistrate in the Court below has given a summary of these transactions (Vide paper book page 47) Reference is given therein to Cox's letters, Exhibits P. 557 series. The defence counsel has taken objection to the admissibility of these letters on the ground that Mr. Cox was not examined as a witness in the case, and though it might be stated that his attendance could not be procured in the lower court without unreasonable delay or expense, the contents of those letters could not be made use of under Section 32 clause (2) of the Evidence Act.

We agree with his contention, but in our opinion there is other evidence forthcoming in ~~Mxxxxx~~ Mr. Mavlanker's books of accounts, Coutts' Weekly statements, Essenflour books and the correspondence between Mr. Mavlanker and Sitharamachar to prove that American sale proceeds had been utilised in the manner suggested by the prosecution. We do not think that it is necessary to pursue the matter further as this aspect of the matter does not throw more light than what the other aspects of the case already referred to by us do.

It is contended by the defence that these -- methods, assuming they were adopted, would only go to prove that steps were taken subsequent to the perpetration of the fraud for the purpose of concealing frauds previously committed, and that they would not constitute the offence of criminal breach of trust. We do not think that they are used or intended to be used by the prosecution for such a purpose. They are used as affording circumstantial evidence of a course of conduct by which when it was found impossible to recoup unauthorised withdrawals already made, recourse was had to questionable methods for repayments.

It was next contended, that Mr. Mavlanker had from the very commencement, cherished the idea of - entangling the appellant into his snare, and that he had no idea of the same until September 1926 or perhaps August 1926, it is then that he found that in spite of the very cordial and intimate terms on which Mr. Mavlanker seemed to be moving, he was perfidious and always putting moneys into Coutts and withdrawing the same to meet Essenflour's drafts from Mysore in order

that

that if the bubble should burst at any time, he could draw Mr. Sitharamachar also into the web as his guilty associate. This argument is, in our opinion, untenable as it is in evidence that Mr. Mavlanker had kept Mr. Sitharamachar informed of the withdrawals from time to time to meet the drafts or remittances of Essenflours; independently of Mr. Mavlanker's statements of accounts, Coutts weekly sheets regularly received by the Essenflours at Mysore contain the necessary information on the point. Apart from this, there are the letters of Mr. Sitharamachar himself showing that he was aware of such withdrawals. Furthermore, it is difficult to believe, having regard to the utmost confidence each reposed in the other's friendliness, any such evil intention, as the defence wish to attribute to Mr. Mavlanker, could at all have been entertained by him.

In regard to the admission contained in the correspondence of the year 1927 and 1928 between Mr. Sitharamachar and Mr. Mavlanker, the defence argument was that the letters were written merely to induce Mr. Mavlanker to sell away all his assets in London and liquidate all the moneys due to the Mysore Government, particularly as the attitude disclosed in the said correspondence was taken by Mr. Sitharamachar long before the deputation of Mr. Parthasarathy to London was thought of. It is urged that from the moment that Mr. Sitharamachar came to know about Mr. Mavlanker's mis-dees, he threatened him first and when Mr. Mavlanker in his turn indulged in mutual recrimination he tried to coax and cajole him actuated by the single desire of getting back the Government money. It is impossible for us to accept this gloss on the correspondence

correspondence as they contain unmistakable indications of Mr. Sitharamachar's knowledge of the manipulations made from time to time.

It was stremously contended on behalf of the defence that far from participating in the fradulent withdrawal of the four items forming the subject matter of the charge, Mr. Sitharamachar took the opportunity of finding fault with Mr. Mavlanker for the omission of these items in the accounts current for the period 1st January 1926 to 30th September 1926, received from Mr. Mavlanker. In support of this contention our attention was drawn to Exhibit P. 203 - P.531 dated the 10th November 1926, a confidential letter, in which Mr. Sitharamachar found fault with Mr.Mavlanker for omitting the said four items aggregating £10,238-13-5 which were admittedly drawn from Coutts & Company. Mr. Sitharamachar writes in that letter thus:--

> "It is perfectly obvious that you have not cared to bestow a moment's attnetion to these statements. You would not have otherwise <u>omitted the amounts you drew</u> from Messrs. Coutts as follows:--
>
> | | | |
> |---|---|---|
> | 11th January 1926 | .. | £.1,138-13-5 |
> | 27th February 1926 | .. | 1,600- 0-0 |
> | 3rd May 1926 | .. | 2,000- 0-0 |
> | 29th June 1926 | .. | 5,600- 0-0 |
> | | | £10,238-13-5 |
>
> What is the meaning of this?"

It has to be noticed that the objection is only to the omission of these amounts in the accounts but not to the withdrawal of the moneys from Messrs. Coutts.

To this communication Mr. Mavlanker seems to have sent the telegram, a draft of which is to be found at the bottom of Exhibit P. 531. It is to this effect :

> "Your confidential letter dated 10th November. All amounts withdrawn from Coutts have been paid directly to you through Eastern Bank and have not entered my books".

This telegram was followed up by a letter Exhibit P. 597 I, dated the 2nd December 1926. A copy of the telegram mentioned above was also enclosed in this letter. This is what Mr. Mavlanker has stated by way of explanation for the omission of the four items complained of :--

"There seems to be confusion in your account books as kept at your end, and that is the only way in which I can account for your misunderstanding of the whole matter, and the consequent anxiety you have been labouring under. I am sending you four vouchers from the Eastern Bank, and you will see from these that the four amounts which you mentioned in the second paragraph of your letter were remitted to you by this Bank, and the cheques for these amounts had been taken in favour of the Eastern Bank from Coutts themselves. These amounts, therefore, have not entered my books, and if they had they would simply have been debited and credited, but there was no necessity for these debits and credits, as they were simply transferred from Essenflour's account with Coutts to Essenflour's account, or your other Institutions at Mysore. If these amounts were received at Mysore, they must have been

been credited to the respective accounts to which they were asked to be credited, and if this had been done you would not have asked me why these entries had been omitted from my statement.

"I fully realise the anxiety that you must have felt when you saw such a confusion at your end in the accounts, and felt that these amounts had been received by me from Coutts and that no credit was given to you, and therefore, the language that you have used is only natural, and I have absolutely nothing to say against it. In your position I would be similarly affected. I hope, however, that these explanations will remove the confusion, and if there are any small items which are still doubtful or inexplicable, please kindly let me know and I shall send fullest details".

In Exhibit P. 531 Mr. Sitharamachar informed Mr.Mavlanker that he had prepared correct statements and had them ready. In Exhibit P.597 I Mr. Mavlanker asked that they might be sent over in order to enable him to set right all the "disturbances and confusions". Three statements were accordingly sent on 23-12-1926 with Exhibit P. 686. The correspondence exhibited in the case throws no further light in the matter. Evidently the correctness of the statements of accounts from January 1st to 30th September 1926, (Exhibit P.202) sent by Mr. Mavlanker and referred to in Exhibit P.531 as incorrect, has been accepted. This correspondence does not, in our opinion, help the contention raised by the learned defence counsel. Mr. Sitharamachar suggested what reply should be sent by the London - ffice to putt off sending the certificates asked for / the Director. In Exhibit P.526 dated the 16th May 1928,

1928, a letter written by him to Mr. Mavlanker, he ha stated

> "I have sent you in code a telegram last night meaning :-- "Personal confidential. Essenflour sent you deferred telegram yesterday. Telegraph immediately reply to Essenflour stating that you will obta necessary certificates and also that you are taking strong measures to collect arrears. Stop telegraph reply as above at once. Stop address all confidential telegrams to me and all official to Esse four Stop. Write a nice convincing letter of explanation to Director on out-standing amounts. Sitar".

> "When I was in Bangalore the other day, i-e. Saturday the 12th instant, there was a terrible commotion both among the Directors of Essenflour and in Government. Arrears to the tune of 28,000 £ are outstanding and many of them are from four to six months old. It was lucky I was in Bangalore that day at the time, otherwise, I dread to think of the con-sequences that would have happened if the Government had taken the measure they contemplated. Now, it is but natural under the circumstances, that they should have a certified list of arrears, i-e., the parties owing money should send statements certifying that the amount said to have been due by them is correct. You cannot send these unless every penny

of

penny of the sales realisations otherwise utilised is paid back. If you fail to promise to send these statements, suspicions will strengthen and they will naturally ask Coutts or some auditirs to examine the situation. The matter would not be in our hands. I have therefore requested you to telegraph to Essenflour something like this:-

> "Shall obtain necessary certificates and forward same. Stop. Strong measures to collect arrears are being taken".

"I am anxiously expecting a telegram like this from you, and I hope you have sent it. In confirming this telegram I want you to explain the fact that it would take sometime to get these certificates, parhaps a week, or ten days, and that in course of sending these certificates some collections will be made. In fact, you must indicate that comprehensive -- statement of affairs and certificate of balance would, in future, be sent regularly. In any case, you must write a letter which would be absolutely convincing and that you are not trying to burke the situation".

See also in this connection Exhibits P. 57 and P. 57A which show that a telegram as suggested was received from Mr. Mavlankar, and that a copu of it was sent to Mr. Narasinga Rao for information.

As regards the liability acknowledgments asked for - by the Director, they said that it was unusual to send them, and that it would be resented to by

customers

customers and that it would affect the custom of the trade. They were asked to send Balance Sheets of th Essenfhours for examination of their financial positi and were reminded very often to send the same. They wrote they would send but they did not actually send the Balance Sheets. They were then asked to send the audit report of their concerns. They sent a copy of their account as audited by one Mr. Naidu. That was received in March of April 1928. That however did not help the Director in any way to find out the financial position. It was then found necessary by the Director to take the necessary steps to get their books of the London office examined. Mr. Partha-sarathy's deputation had been sanctioned in May 1928. The Director then asked him to audit the London accounts and investigage the position in respect of outstandings and the stock. He also wrote to Mr.Sitharamachar to afford facilities to Mr. Parthasarathy to check the books of accounts (See also Exhibit P. 551). Mr. Parathasarathy left Bangalore in June 1928 and reached London in July 1928.

Sometime before Mr. Parthasarathy left, Mr. Sitharamachar intimated Mr. Mavlanker about the deputation of Mr. Parthasarathy and mentioned that if possible he would see that Mr. Parthasarathy went to New York first and returned to London in July or August in order to enable Mr. Mavlanker to gain some time for putting the accounts of the sandal oil business in proper order (Vide. Exhibit P. 526 dated the 16th May 1928). On the 29th June 1928 Mr.Sitharamachar telegraphed to Mr.Mavlanker thus :

"Parthasarathi Assistant Director expected to arrive London about 3rd July meet at Station. Put him up and take care of him

Slip 8:1p

stop. He will first check stocks of oil for which please give him facilities ".

As to what happened when Parthasarathi went to Mavlankar to audit the agency accounts may be stated in his own words:-

" During the middle of July I told Mr. Mavlankar that I had to audit the agency accounts and he told me that since his factory was being shifted from Chiswick to Yeasley everything was in a disorganised state and he would keep everything ready by the time I returned from America. On the day of my departure from London to New York, I received a copy of a letter from the Director to Mr. Mavlankar stating that the certified list of balances due by individual customers had not been despatched in spite of several reminders. The liability had to be acknowledged by the customers concerned. I told Mr. Mavlankar that such a list was long overdue and it should be expedited. I also told him that the position in respect of outstandings should be improved without delay. Mr. Mavlankar told me that such a practice as the one of taking liability acknowledgments from the buyers was not current in trade circles, and in view of the fact that I was auditing the accounts soon after my return from New York to consider whether such a statement was necessary. wrote to the Director this fact and said that if in spite of my auditing the accounts he (the Director) wanted the liability acknowledgments I would urge to get them. I was not able to audit the accounts in July as Mr. Mavlankar's factory was being shifted from Chiswick to Yeasley. "

In the meantime Mr. Mavlanker wrote to Mr. Sitharamachar (Ex. D.65 dated the 31st July 1928) thus:

> Mr. Parthasarathi is leaving to-night to Southampton to catch his boat to U.S.A. tomorrow. He has had no time to examine accounts as he && intended to do. He could see some of the English factories in up-country when he went to see some of our customers. My representative Mr. Drew was with him during the whole of the tour and Mr. Drew has rendered immense service to Mr. P.S.
>
> " Owing to the non-examination of the accounts, the exposure of the utilization of sandal moneys has been saved. I have thus two months more breathing time; but the unavoidable and inevitable prospect of that exposure is there when Mr. P.S. returns from U.S.A. "

Mr. Mavlanker wrote to Mr. Sitharamachar again& on the 9th of August 1928 mentioning that Mr. Parthasarathi was expected back in London by about the end of September and that meant that his lease of life had been extended till then. He added:-

> " From the letters received from Narasinga Rao by us officially and from the instructions received by Mr. Sarathi personally, verbally and in writing, it is definitely clear that Government suspect the appropriation of sandal money by us both or by me alone - at least. When the audit

audit is made by Mr. Sarathi of the books, this fact will stand out clear and there is no hiding or explaining away this fact. The only doubt I have in my mind is as to how far this is already made known to both Mr. Narasinga Rao and P. Sarathi. Have you ever taken them or any of them into your confidence. If so, to what extent? Whatever that position be, when the extent of money (sandal) appropriated by me is seen, any one will be be agahst and I must be condemned. There is no justification possible and there is no money deserved. The only question is what next should be done to me. If all of a sudden, I I am made a bankrupt and civil action is brought against me, the consequence will be along with me you too will be exposed; because whatever I do to save you, it is impossible to conceal the fact that at times you too have appropriated large sums. " (Ex. D. 66).

Mr. Mavlanker was also pressing Mr. Sitharamachar to go to London and help him in straightening up the accounts (Vide Ex. D 618 dated the 11th August 1928.) In that letter he asked Mr. Seetharamachar that in case it became absolutely impossible for him to go to London, whether he could leave everything at London in Mr. Parthasarathi's hands in whom he had every confidence and go to Mysore himself so as to lay bare all that had happened to the authorities here. To this Mr. Sitharamachar sent a telegraphic reply (Ex. P) 594 (c)-(d) dated the 11th September 1928). It runs thus:-

"Confidential. Your 14th August.
You must on no account acquaint
Sarathi of what you have done but
should manage satisfy him regard-
ing outstanding amount, I cannot ~~leave India now~~
leave India now but could during
November. When is Sarathi expected
in London. "

Mr. Parthasarathi returned to London on the the 25th of November 1928 and started investigation on 27-11-1928 covering the period 1-9-1923 to 21-12-1928, with the result that

(1) from 1-9-1923 to May 1924 all the sandal oil moneys received by Mr. Mavlanker were credited to Coutts and Company except Mr. Astiers' bill of £ 5,220 relating to Invoice No. 3;

(2) (a) Recoveries were being retained by Mr. Mavlanker for some time and subsequently credited to Coutts and Company in the name of custo

(b) Some items were not credited at all;

(c) In some cases amounts shown as collected were in excess of the invoice prices, but only the prices shown in the invoices were credited to Coutts and the excess was retained by Mr. Mavlanker.

In this connection we may briefly refer to the facts that immediately preceded Mr. Parthasarathi's inspection of Mr. Mavlanker's books of accounts in London.

The Director of Sandal Oil Factories has stated in his deposition that the Essenflours were submitting regularly every month and their monthly accounts of

statements, list of outstandings and stock statements which the agents had to submit were not being received regularly, and that he was obliged to send a number of reminders to get these statements. He was also obliged to call for statements of collections made from individual purchasers, so that he might watch the progress of collection from each purchaser. He also wanted statements showing the progress of collections from each purchaser. The agents were sending him statements of collections made at Couuts and Company. But these statements gave only the name of the party and the amount collected. From these statements he was checking the names of parties from whom moneys were due, and he used to call the attention of the agents to these items and ask the reason for the delay. He was receiving the replies to the effect that in certain cases credits had to be extended at the request of the parties, that special credit facilities should be shown to them in view of the change of agency and the prejudice against them in the market. They said that the previous agents were giving long credits and they also to do the same same. They also used to refe: to the competition of Australian oil, s a y i n g that their London Agent was touring in the continent and that special concession had to be shown to their customers. The agents were called upon by him frequently to take steps to reduce such arrears whenver by looking into the cables it was seen that the arrears were heavy (see page 104 of the paper book, lines 15 to 48).

As the progress made in the matter of collection of arrears was not satisfactory, and when in the month of December 1927 he found that the arrears swollen up to a considerable extent, the agents w asked to obtain liability acknowledgments from cu and submit the same to him. They promised to se certified arrears lists but failed to do so.

In his audit report, Ex. D. 185, Mr. Parthas has stated in the column of " General remarks " t copies of invoices were compared with the account sales and found to agree, but in the majority of the actual amount received from buyers against th invoices was in excess, and that the difference b the two amounts was £ 5,043-16-0. He had reason to believe that the copis of invoices filed were not the true copies of original sent to Mysore buyers. Except in respect of the business transacted through M. Duclos, no record was forthcoming to show the exact amounts for which the firms were invoiced, and in respect of these invoices it was found that the firms were invoiced for a higher amount than was shown in the account sales. But the copies of invoices were made to correspond with the account of sales showing a lower amount. This however is insufficient, unless there is other evidence to bring home to Mr. Sitharamachar knowledge of such excess collection. In his evidence Mr. Parathasarathi has stated:

> " The practice of altering the invoices commenced in June 1925. I was told by Navlenker that when a number of invoices were sent to Mysore as usual, they were returned for correction and re-submission, so that lower amounts can be shown

shown in the invoices. In the case of M. Duclos, the lower amounts were shown in the account sales, "

This part of the evidence is corroborated by Exhibits P. 529 and P. 530. P. 529 is a copy of a letter dat the 20th August 1925 from Mr. B. Sitharamachar to Mr. Mavlanker and this is what he has stated therein:-

" I am returning herewith Invoice No. 306 of Messrs. Polak and Schwarz relating to the sale of 375 lbs. at 26. You remember you have given them £ 50/- rebate being the allowances at 6d. per lb. on 2,000 lbs. Here again Government have disallowed the £ 50/-, though they full well see that the rate of 26 provides all the margin required to cover £ 50/-. They should rather see the oil sold at 23/6 and I shall, therefore, be obliged if you will send me a corrected Invoice showing the rate at 23/6. This would enable us to cover about £ 47-2-6 against £ 50/-. The balance of £ 2-17-6 will have to be borne by us, of course. Please treat these correspondence as personal and don't put them in your files".

In Exhibit P. 530, another letter of the same date, Mr. Sitharamachar writes:-

" I am returning herewith the following invoices:- June No. 314, 315, 316, 317, 328 and 329. July No. 333, 335, 344.

The reason for returning these is that you

you might send me fresh case prepared as corrected in the enclosures. To make matters clear, I wish to state that the invoices must be in the name Of Messrs. Maurice Duclos for the parties to whom the oil is sold. The rate to the parties made out would be 23/6, but as Government are not prepared to pay brokerage in cash or by credit notes, the only alternative is what I have proposed viz., to prepare the invoices in the name of Duclos for 23/3. When the money is remitted to Messrs. Coutts the full amount will be remitted by the parties direct at 23/6. All this amounts to the same thing and it is most unfortunate that Government will not view these transactions in the correct light. Personally, I am not satisfied with this arrangement, but there is no other way out of it. The same applies to invoices for the month of July. I trust I am clear. Please return my enclosures also".

Mr. Parthasarathi's audit report was sent to Government in the month of January 1929. About the 8th or 9th January 1929 Mr. Parthasarathi sent a cable from London (Exhibit E. 256) in which it was mentioned that the amount collected and utilised by Mr. Mavlanker was £ 49,000/- of which he had paid to Essenflour £ 7,400/-. Amount due from buyers was

Thereupon

Thereupon the accounts of Essenflour Products Mysore, were got audited by Mr. K.R. Krishnaswami Iyengar, Deputy Comptroller about the end of January 1929. On the receipt of his report that the sale proceeds of sandal oil were appropriated by the agents, Mr. Narasinga Rao lodged a complaint with the Inspector General of Police on the 19th of March 1929 (vide Exhibit P. 50).

Certain points of law were raised and argued with much ability by the defence Counsel.

He contended to start with that section 409 of the Indian Penal Code did not apply to this case, as the accused was not, in the strict sense of the term, an agent of Government, though for the sake of argument it may be conceded that the Company of which he was the Managing Director may be considered to be the agents of Government; that is to say, individually Mr. Sitharamachar was not the agent though collectively the corporate body of which he was a member were the agents. According to law the collective agency having vested in the Essenflour Products, Limited, each Director will n not ipso facto become an individual agent to Government. An agent being a person who is appointed to transact the business of another, it is not Mr. Sitharamachar that was appointed by Government to transact such business on their behalf. On these grounds it is argued that the charge under Section 409 was not legal. Beyond stating his arguments in these terms, the learned Counsel did not wish to press the point further, as in any circumstances charge under Section 406 could be maintained against the appellant, though the inapplicabili- t y of Section 409 is accepted.

This

This question arose for decision in Rex Vs. Cuffin, 127 Law Times 564 (Criminal Appeal). Lord Howart C.J., observed:-

> "Now it is clear that in the inception of the matter there was an entrustment to the company, but there may also be an entrustment to a person active in the financial affairs of the company. It may well be for the Jury to consider whether a person acting in the affairs of the company is entrusted, and if that question was open to them the Jury might consider that the entrustment was to the appellant. That it is a question for the Jury is shown by Rex Vs. Grubb (1915 2 K.B. 683) where in the Judgment delivered by Lord Reading, C.J., -- It is said: " In the opinion of this Court a person may be ~~entrusted~~ entrusted with property, or may receive it for or an accou of another person, within the meaning of this Section (Section 1 of the English ~~Act~~ Larceny Act 1901), notwithstanding that the property is not delivered to him directly by the owner, and that in fact the owner does not know of his existence ~~at~~ and has no intention of entrusting the property to him. If the accused has obtained or assumed the control of the property of another person under circumstances whereby ~~he~~ becomes entrusted or whereby his receipt becomes receipt for

fraudulently converts it or the proceeds, then he has committed an offence within the section".

Lord Reading added: -

"There cannot be a fraudulent conversion without an intent to defraud. A company has not mind and cannot have an intention. If the person directing or controlling the affairs of the company and by whose instructions the property has passed into the possession of the company and has been converted, intended (?) to convert it fraudulently, he would be guilty of an offence whether the property was fraudulently converted to the use or benefit of the company or to his own use or benefit".

The point however need not be pursued further.

It was then contended that though the terms the 'agency' and 'agents' are used throughout the agreement (Exhibit P.14) clauses 7 to 10 read together really created the relation of 'creditor and debtor' or 'vendor and purchaser', and not that of 'principal and agent' inasmuch as the final responsibility for the recoveries of sale proceeds rested with the Essenflours - a position inconsistent with that of an agent. As we understand, the contention of the learned consel is this. As there was no privity of contract between Government and the buyers, and as Government had no control over the Essenflour in the matter of giving credit to the customers

Government

Government had no right to press the Essenflour reduce the outstanding liabilities, and that th non-compliance with such a demand might possibly involve the termination of the agency by six mon notice, it would not render the defaulting party liable to criminal prosecution. The only control that Government could exercise over the agents is that of fixing the minimum price of the oil, but that did not prevent the agents exercising their own discretion in the matter of selecting their buyers. Even if such buyers turn out to be insolve Government have no voice in the matter. In this state of things the relation of principal and agent could not be inferred. In support of this contention particular stress was laid upon clause 10 of the agreement. Clause 10 provides that the agents shall be liable for all moneys recoverable on the sales effected by them and any credit given by them shall be at their own risk and the agent shall not be entitled to any question of bad debts. It also provides that the agents shall remit such amounts to the credit of Government within six months after the sale whether they have recovered the same or not. In clause 6 however it is stated that all the proceeds less commission and other expenses should be remitted to the account of Government with Messrs. Coutts & Company in London without any delay and not less than once a week.

Our attention was drawn to the history of these two clauses occurring in the final agreement. in the draft agreement submitted by Mr.Vardhamaniah with his letter of the 27th May 1923 (Exhibit P.1.) clause 4 provided that the agents should credit every month to the treasuries or to their banks

-broad the sales amount realised during the previous
onth. The former part of clause 10 of the final
greement was in substance embodied in clause 9 of th
sandlewood draft. In the next draft (Exhibit P.8A)
ted the 24th July 1923 these two clauses were incor-
rated without any substantial change. When this
aft was sent to the Director of Sandalwood all
otories for opinion, he suggested an alteration in
use 6 of the period within which the sale realisa-
ons should be remitted to Coutts & Co., from one
th to one week. He did not make any suggestions
regard to clause 10. A few inconsequential altera-
ns were made in the next draft (Exhibit P.10A) dated
h October 1924. It is in the draft finally approved
Government (Exhibit P.11 dated the 9th February 1925
find for the first time the addition of clause 10
which most of the arguments of the defence counsel
e based. That clause, as we have already stated,
provides that the agents shall remit such amounts to
the credit of Government within six months after the
sale, whether they have recovered the same or not.
Prima facie this addition seems to be inconsistent
with the provision in clause 6. Where-as under clause
6 the sale proceeds have to be remitted to the credit
of Government not less than once a week, this clause
gives liberty to the agents to remit within six months
after the sale whether the sale proceeds have been
recovered or not. The contention of the defence
is that clause 10 enables the Essenflours to retain the
sale proceeds in their hands for a period of six
months after the sale, consequently they cannot be held
guilty of withholding payment to Coutts & Co., during

such

such period, and after the expiry of that period they
rely become debtors to Government, and in referenc
the unremitted sale proceeds, whether recovered
not, the relation between Government and Essen-
urs is that of creditor and debtor. The defence
nsel however concedes that clauses 6 and 10 are
ble of reconciliation. His construction is that
a piece of over-caution a provision has been made
clause 6 that every week sale proceeds should be
itted to Government, though as a matter of fact
senflours have the right toretain the money in their
nds for a period of six months, whether they re-
rer the sale proceeds or not. Carrying this
gument to its logical conclusion, it will mean that
pposing from Astiers a sum of £ 10,000/- was realis-
, within a week after the sale of the oil to him,
senflours can make use of the money for a period
six months after the sale and then at the end of
months they may pay it and yet their act will not
fend against clause 10. Or again, if Astiers i-
ven credit for one year which under the agreeme
vernment cannot object to, the Essenflour is bo
pay the sum within six months from the date o
e sale even though Astiers may not have paid th
ount.For these reasons it is contended that fro
e moment oil is delivered to Essenflours they
come buyers of oil and debtors in respect there
thin the limitations and qualifications gathere
om clause 10.

In our opinion the words "whether they have
ecovered the same " occurring at the concluding
portion of clause 10 are not happy and have been
inaccurately used. The word "recovered" in that
sentence is literally inexact. The context and
subject

matter of clause 10 of the contract seem to indicate that word whose meaning taken by itself is clear. has been inaccurately used. In constructing a contract the writing should be read as a whole and every part should be construed with reference to the whole, so that effect may be given to its general purpose. Where one intention appears in one clause in an instrument, and a different conflicting intention appears in another clause, in the same instrument, that intention should be given effect to which appears in the principal or more important clause. In the present contract it is obvious that clause 6 refers to all sale proceeds received. Such proceeds as are received should be remitted to the account of the Government with Coutts & Company not less that once a week. That is probably the reason why Coutts Sheets are required to be sent once a week. The former part of clause 10 consists of three separate provisions.

(1) the liability of the agents extends to all the moneys recoverable on the sales effected.

(2) any credits given by the agents shall be their risk; and

(3) the agents shall not be entitled to raise any question of bad debts.

It is obvious that this clause has no reference to moneys received or recovered. To this clause another provision has been added and that requires that the agents should remit such amounts to Government within six month after the sale. The use of the word "such" denotes that the amounts which are within the intention of the parties are those referred to in the foregoing part of clause;that is to say,

to all moneys recoverable but not recovered, whether they were good or bad debts. Therefore the words "whether they have recovered the same or not" used in the latter part of clause 10 seem to be clearly a mistake for the words "whether they are recoverable or not". The result is that if moneys are recovered, they ought to be credited at least once a week. If moneys are recovered, Government will wait for six months and then treat it as a debt due by the Agents themselves, irrespective of the fact whether they collect the same or not. The relation of the parties, at any rate in so far as moneys recovered are concerned, cannot be one of creditor and debtor.

It is argued by the learned Government Advocate that the position of the Messrs. is really that of a del-credere agent and that all the clauses of the agreement read together in the light of the circumstances showing the course of dealing between the parties both before and after the agreement point out to the conclusion that they did not become purchasers of the oil consigned to them when they were sold to third parties.

Among the cases cited by the learned counsel for the appellant in support of his contention, the most important one is Exparte White, in re - Nevill (1871 L.R. 6 Ch A.C.397) confirmed in John Towle & Company Vs. White (1873, 29 Law Times 78). In that case Towle and Company consigned goods to Nevill at an invoice price. N. dealt with the goods as <u>owner</u> and sold them to buyers at such prices and in such manner as he thought fit. He sent regular monthly statements of goods sold and every month paid only the invoice price comprised in the previous monthly state-

The business which N. carried on with T & Co., was calle the cotton agency business. Moreover, in that case N. pursued his own course of dealing with his goods and fre quently before sale he manipulated them to a considerabl extent by pressing, dyei ; nd otherwise altering their character; and this course of dealing was known to T & C Further N. did not keep with his bankers a distinct account headed and earmarked as an account of T & C., or as an account of the cotton agency business. In these circumstances the Court held that the nature of the business carried on between T & Co., and N. was that of vendor and vendee, on the ground that a consignee who is at liberty, according to the contract between him and his consignor, to sell at any price he likes and to receive payment at any time he likes but is bound, if he sells his goods, to pay the consignor for them at a fixed price and at a fixed time was not a del credere agent. "The real question" as Sir George Mellish L.J. put it on page 402, "is, when N. sold the goods, did he sell them as the agent of T & Co., so as to make T & Co., the vendors, and the persons to whom he sold, purchasers from T & Co., ? Or, did he sell on his own account so as to create the relation of purchaser and vendor between himself and the persons to whom he sold?

At page 303 the learned Lord Justice observed that

"If it had been his (N's) duty to sell to his customers at that price and to receive payment from them at that time (time and price fixed by T & Co.,) then the course of dealing will be consistant with his (N) being merely a del credere agent. ● ●

he is authorised by his principal to sell, and upon the credit which he is authorised by his principal to give, and the customer pays him according to his contract, then, no doubt, he is bound, like any other agent, as soon as he receives the money, to hand it over to the principal. But if the consignee is at liberty, according to the contract between him and his consignor to sell at any price he likes, and receive payment at any time he likes, he is to be found, if he sells the goods, to pay the consignor for them at a fixed price and a fixed time, -- in my opinion whatever the parties may think, their relation is not that of principal and agent".

In his statement of the legal position of a del credere agent, the learned judge has perhaps used very wide language and in Babriel Vz Churchill, (1914, 3. K.B. 1272 at page 1278 and 1279) the liability in law of such an agent is clearly defined. The question however is not of real importance in the present case.

The next case of importance bearing on this question is Exparte Bright in re - Smith (1879 L.R. 10 Ch. 566) where the circumstances that would furnish the test for ascertaining the true relation between the parties, whether it is one of vendor and purchaser or of principal and agent, are referred to in the judgment of Sir George Jusell M.R. The first is, according to the Master of the Rolls, that if the consignees guaranteed all accounts and they

they were liable for the buyers paying the prices the position would be one which would be wholly inconsistent with the notion that they were the purchasers, because in the opinion of the learned judge the Consignees would in those circumstances be guaranteeing payment of a debt due by themselves -- a debt which they would be personally liable to pay as purchasers. And "what would be the use of guaranteeing the payment by themselves ?" The next one is that the consignees in that case did not hold themselves out as the owners of the goods sold by them. It would appear that on their door and in their invoices they described themselves as carrying on the business of "merchants and manufacturers' agents". So that all persons that were dealing with them that their business was that of <u>agents</u> and that the goods were with them as <u>agents</u>.

The real distinction between sale and agency in such cases is well summarised at page 23 of Katiar on Agency:

> " The essence of sale is the transfer of the title to the goods for price paid or to be paid. The transferee in such case becomes liable to the transferor of the goods as a debtor for the price to be paid and not as an agent for the proceeds of the re-sale. Fluctuations in price and loss or gain to the goods in such cases which result after the receipt of the goods go to the transferee and not to the transferor, who must remain contented only with such sums as were agreed by the parties to be paid in lieu of the goods transferred. The essence of agency

to sell is the delivery of the good person who is to sell them, not as his own property but as the property of the principal who continues to be th owner of the goods and therefore entitled to control their sale, as for instance to fix their price, to dictate the terms of resale or to re-sell the goods. He cannot demand the prices of the goods before re-sale but only such proceeds as accrue to him on such re-sale.

Whether in the particular circumstances of a case the consignee is a vendee or agent is therefore a question of fact, and those circumstances have to be ascertained first before coming to a conclusion one way or the other.

Our attention was next drawn to a case reported in (1913) 21 Indian Cases, 322. The facts of the case as summarised at page 329 are:

"Goods were consigned by the plaintiffs to the 1st defendant; he was debited with a certain price at the moment when the goods were consigned to him; he was at liberty to sell them without further communication with the plaintiffs, and apparently at prices which he himself could control As soon as the goods were consigned to the 1st defendant, and he was debited with their prices in the books of the plaintiffs, interest began to be payable by the 1st defendant on the prices so debited. @ ffrom the date when the goods were consigned to him and not from the date when he disposed of the goods". To these facts, the

the principle of the decision in Exparte White in re - Nevill applies, in as much as the consignee was debited with the price and was charged with interest from the date when the consignment was made, the consignee was at liberty to sell the goods at prices fixed by himself without reference to the consignor, as if the goods were his own, subject only to the course of dealing with that he was not to pay until he had sold the goods.

In a recent case reported in 1927 A.I.R. Madras 1020 it appeared that under the contract between the parties the appellants (Sri Vilas firm) were appointed sole Banyans of the Tinnevelly Textiles, Ltd. that they were to sell all goods manufactured or produced by the Company at such prices as were to be approved by or on behalf of the company, and to be responsible to the company for the due payment by the buyers of all contracts entered into by them with regard to such goods, the Banyans selling the goods consigned to them as the goods of the Company. The Madras High Court held applying the principle of the decision in Exparte Bright in re : - Smith, that the Sri Vilas acted as the del credere agents of the company.

In the present case the agreement between the Essenflours and Government provided

(1) that Essenflour should be the selling agents of all sandalwood oil manufactured by Government (Clause 1).

(2) that Government should bear all charges from the factory to the chief distributing centres (Clause 3);

(3) that the agents should warehouse and insure the oil as soon as they take delivery of the same bearing all the charges incidental thereto themselves (Clause 4);

(4) that the agents should keep regular books of accounts of all oil received, oil sold and receipts and payments and should transmit true and complete account at the end of every month, of transactions carried on during that month (clause 5);

(5) that the agents should remit the sale proceeds less commission and expenses to Coutts & Company once week (clause 6);

(6) that Government should have the right to fix the minimum prices at which oil should be sold by the agents (clause 8);

(7) that the agents should be responsible to Government for all the oil delivered or supplied (clause 9);

(8) that the agents should be liable for all moneys recoverable on the sales effected without raising any question of bad debts (clause 10);

(9) that as remuneration for their services the agents should be allowed a commission of 3½ per cent on the sale proceeds realised by them (clause 12);

(10) that at the termination of the contract the agents should deliver to Government all unsold oil in their custody (clause 15);

These terms indicate, in our opinion, that the contract between the parties is one of agency and not of sale.

In the letter heads of the Essenflour Products, Ltd., (sandalwood oil department) used by the London Branch the seal of the Government of Mysore is found imprinted at the top, and the Essenflour Products Ltd., are described as the Agents for the Mysore Government for sandalwood oil (e.g. Exhibit D.84). If the correspondence related merely to the Essenflour Products Ltd.,

unconnected with sandalwood oil, then the seal of the Government was not put in and the words "Agents for the Mysore Government sandalwood oil" were omitt (e.g.Exhibit D.96). In the letter heads used in Mys they describe themselves as "sole consignees and dis butors of the Mysore Government sandalwood oil" (e.g. Exhibit P.332). In the letter heads used in London, Mr.K.B.Mavlanker is described as the sole London Age (e.g.P.361 and D.84). It is therefore obviou that the buyers of oil in Europe knew they were deal with Essenflours as agents of the Mysore Government. The principle that applies to the present case is wha is contained in Exparte Bright in re: Smith and not i Exparte White in re: Nevill. In saying so, we do not lose sight of the argument based upon the second part of clause 10 of the agreement pressed on our attention by the defence counsel.

The next question of law raised by the learned counsel for the appellant is that there was no entrustment of either sandal oil or the sale proceeds thereof to Mr.Sitharamachar at London, as it is Mr.Mavlanker acting n his capacity as "sub agent" that took delivery of oil he/consigned to the Essenflours, sent requisitions for the oil whenever it was necessary, effected sale of oil in Europe, and received the sale proceeds, except where direct remittances to Coutts & Co., were made by the buyers. The entrustment was therefore to Mr.Mavlanker and not to Mr.Sitharamachar. In developing this argument the counsel conceded that all that was said above may be taken as referring not to Mr.Mavlanker personally but to the branch office of Essenflours in London, of which Mr.Mavlanker , as their Sub Agent was in sole charge, but contended that both Messrs.Mavlanker and Sitharamachar were creatures of Essenflours, one representing the Company in London and the other in Mysore.

An entrustment made to one is not, in law, the same as an entrustment made to another: that is to say, the entrustment to the London office is entrustment to Mr.Mavlanker.

What is the legal position of Mr.Mavlanker in respect of the agency contract between the Essenflours and Government? Is it contended on behalf of the appellant that Mr.Mavlanker's position was that of a Sub Agent, properly appointed as such, as from the nature of the Agency, viz., the sale of oil in Europe, a Sub agent must be employed for sales there, unless, of course, one of the members of the agency Company was able to go from Mysore to London and run the business there. Counsel referred to certain passages in the evidence of Mr.Narasinga Rao, in support of the view he had presented. At page 102, lines 52 to 54 he says:-

> "After the transfer of the Agency, Mr.Mavlanker, who was attending to the work of the Essenflour Products Company in London, was transacting sandal oil agency business on behalf of the Essenflour Products and in their name".

Again at page 109, lines 30 to 40 he says:-

> "I knew that at the very commencement of the agency the Essenflours appointed Mr.Mavlanker as their sub agent in London for the purpose. I was not receiving any returns direct from Mavlanker. Whenever oil was required, Mavlanker used to send requisitions and I was receiving these instructions from Essenflour also. Up to a certain stage I was writting to him about arrears also, and then Mr.Sitharamachar asked me not to write to him. There-after I did not write to Mr.Mavlanker about arrears. * * The Essenflours must have been getting their information from their sub agent Mr.Mavlanker. * * We treated Mavlanker as a sub agent".

In some of the letter heads we find him variously described:

Ex.D.28(c) 5-12-23.	'Correspondent'.
Ex.D.26 21-11-23	'Representative'.
Ex.D.28 [illegible]. 15-12-23.	'London correspondent'. (The Office in London is called 'Our London Office').

Ex.P.72 26-9-23	'Our sole European Agent' (in the invoice). (Explained in Ex.P.73 as the form of invoice used by Essenflours, for their products).
	'Foreign correspondent' (in the letter head).
Ex.P.80 6-12-23.	'Correspondent'
Ex.P.329 23.7.23.	'Sole Agent for Europe' (Letter head used by the Essenflour for their general business, not sandal oil).
Ex.D.85 25-9-24.	'Foreign Correspondent' (Letter head used for general business).
Ex.D.84 7-7-27	'Sole Agent' (Sandal oil letter head) (Sandal oil Department).
Ex.P.343 25-[illegible]-24	'Our Agent' Mr.K.B.Mavlanker.
Ex.P.361 10-1-27	Sole Agent, London. (Sandal oil letter head).

It is thus seen that there is neither consistency nor uniformity in the description.

At one stage of his argument it looked to us that the learned counsel for the defence gave Mr.Mavlanker a position which Sections 194 and 195 of the Contract Act contemplated. To make Section 194, applicable, the agent must hold an express or implied authority to name another person to act for the principal in the business of the agency and armed with such authority if the agent names another person accordingly, the person so named is not a sub agent, but a substituted agent of the principal. In the present case it is not claimed that there was any privity of contract between Government and Mr.Mavlanker. Indeed Mr.Sitharamachar in one of his letters to the Director of Sandal Oil Factories asked him not to write to Mr.Mavlanker direct regarding remittances to Coutts & Company, but to address such communications to him. The American Agents who occupied a position in New York similar to that occupied by Mr.Mavlanker at London wrote to the Director of Industries, when he asked them for accounts, as follows:-

> We recognise the connection between yourself and the Essenflour Products, Ltd., but as far as we are concerned, our arrangements are with the Essenflour, and until such time as we have their written instructions to furnish you with accounts, we do not see how we can possibly carry out your instructions, such as we should like to do".

In these circumstances, we are unable to hold that Mr.Mavlanker's position was that of a substituted agent of the principal, in conducting any part of the busines relating to the agency contract.

Is he a sub agent then? A sub agent is a person employed by, and acting under the control of the origin agent in the business of the agency (Section 191 of Contract Act). Where the sub agent is properly appoint. ed, the principal is, so far as regards third persons represented by the sub agent, and is bound by and responsible for his act, as if he was an agent originally appointed by the principal. The agent is responsible to the principal for the acts of the sub agent and the sub agent is, in his turn, responsible for his acts to the agent, but not to the principal ~~[illegible]~~ except in cases of fraud or wilful wrong (Section 192) But where an agent, without having authority to do so, has appointed a person to act as a sub agent, the agen stands towards such person in the relation of a princi to an agent, and is responsible for his acts, both to the principal and to third persons. The principal is epresented by or responsible for the acts of the pers o employed, nor is that person responsible to the pri al (Section 193.) Unlike the case of a substituted gent of the principal, there is no privity of contract etween ~~[illegible]~~ a sub agent of the agent and the principal.

In a recent case reported in the Weekly Notes (192 135 (National Employers' Mutual General Insurance Ass lation Ltd., VS Elphinstone), Mackimon J. observed as llows:-

"The fact was that the defendant, in carrying out that which, as between him and the plaintiffs, was his business, had allowed it to be performed throughout by the Green Park Motor Company. It had been contended on behalf of the defendant that he had not received any of the money which was claimed by the plaintiff, and that in fact the Green Park Motor Company had received it. But that would not absolve the defendant. As between him and the plaintiffs the money had been received in pursuance of his duty and right to receive it. If the position had to be legally analysed, the defendant, as between himself and the plaintiffs, must be treated as though he had this money by his sub agents, whom he had allowed to carry out his obligations to the plaintiffs throughout. Therefore, though it might be true to say that it was the Green Park Motor Company, and not the defendant that had received this money, nevertheless, as between the defendant and the plaintiffs, he must be deemed to have received it by the Green Park Motor Company, as his agents&.

Assuming for the sake of argument that Mr.Mavlanker occupied the position of sub agent of the Essenflours, still it is the Essenflours that in law, must be deemed to have received the money, according to the decision of Mackimon J., and it is they that are responsible to Government. Essenflours cannot, in

these circumstances, allege that the sandal oil monies received by them, were not entrusted to them, or that they had no dominion over such monies. The question whether Mr.Mavlanker was a sub agent of the agents or not, is not therefore of material consequence, and we do not think it necessary for the purpose of this case to say more.

The next question of law adverted to by the learned counsel for the defence was that the Court in Mysore had no jurisdiction to try the appellant for the offence of criminal breach of trust that must be deemed to have occurred in London. This question has been dealt with exhaustively in the lower court's judgement at pages 36 and 37 of the print book, and it is therefore not necessary for us to dwell on the subject at any great length. The rules as to the place of enquiry or trial are contained in Sections 177 to 188 of the Code of Criminal Procedure.

Under Section 177, every offence shall ordinarily be enquired into and tried by a court within the local limits of whose jurisdiction it was committed.

Under Section 179, when a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Under Section 161 clause (2), the offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

Under Section 188, when any subject of His Highness the Maharaja commits an offence at any place without and beyond the limits of Mysore, he may be dealt with in respect of such offence as if it had been committed at any place within Mysore at which he may be found.

Provided that no charge as to any such offence shall be enquired into in Mysore if he has been already tried of the same offence at the place where it was committed, and, where it is an offence for which extradition can be demanded by the British Government, unless the Government of Mysore shall in the first instance have referred to the British Resident in Mysore to ascertain whether the British Government waives its right to demand the surrender of the accused.

The ordinary rule therefore is that the area within which the offence is committed, and not the place where the offender may be found that determines the Court which has jurisdiction to try the offence. But in cases of criminal breach of trust, the offender may be tried either at the place where the offence was committed or at the place where the property was received or retained. There is, however, the other general rule that where a person is accused of the commission of an offence by reason of anything which has been done, and of any consequence which has ensued he may be tried either at the place where the thing was done or the consequence ensued. The words 'any consequence which has ensued' in the rule have been held to mean in some cases, as a consequence which forms a part and parcel of the offence and not a consequence which is not such a direct result of the act of the offender as to form no part of the offence. It appears to us that upon the wording of the Section the consequence referred to must be one of the facts to be proved to establish the offence. There are, however, some recent cases in which it has been held that the

words should be given their wide grammatical meaning and not restricted to mean a consequence which is a necessary ingredient of the offence. Whether Section 179 Criminal Procedure Code controls Section 181 or not, we have the plain words in Section 181(2) that the offence may be tried also & the place where the subject matter of the offence was received or retained.

In the present case the amounts forming the subject matter of the charge were withdrawn from Coutts and Company and transmitted to the credit of the Essenflours or the Mysore Development Syndicate. The monies were therefore received in Mysore, and until they were actually appropriated to the various concerns, were also retained in their respective accounts. At any rate in respect of the £ 2,000/- remitted to the Mysore Development Syndicate the amount was undoubtedly received an Mysore. Therefore the Court at Mysore within whose jurisdiction the accounts of the Head Office are kept and maintained, had jurisdiction to enquire into and try the offence.

But there is also another aspect of the matter. So far as the appellant is concerned, dishonest misappropriation or dishonest use of disposition of the property may be said to have been committed, just at the time the necessary transfer entries were made in the books of accounts at Mysore, for until that was done, the dishonest conversion or use or disposition did not take place. There is also the further fact that accounts had to be rendered by the agents at their Head Office in Mysore. For these and other reasons elaborated in the judgement of the lower Court, we hold that it had jurisdiction to enquire into and try the offence.

It was next argued that the money said to have been taken by Mr.Sitharamachar was money still in the hands of Mr.Mavlanker, their London representative,

who had control over all the moneys due to Essenflour, and until from that money that which was due to Essenfour Company on account of commission and expenses sanctioned by Government, was separated and the balance deposited in Coutts and Company to the Royalty account, it did not become the money of Government. Whether that is so or not is not a matter to be settled by a Criminal Court or a Civil Court but by Arbitration as provided for in the agreement. We have no facts come to the conclusion in another part of the judgment that the monies misappropriated are monies belonging to Government, which the Essenflours had no right to draw from for being used for other purposes. This question does not therefore arise, and even if it does, where there is clear proof of dishonest conversion, as we find there is in the present case, the arbitration clause in the agreement does not operate as a bar to a criminal prosecution being launched for the offence committed.

The last question argued was that a prosecution did not lie where the accounts between the agent and the principal was a running account and the final settlement had not yet taken place. From the statement of accounts furnished to the Court by the auditors, the correctness of which is not open to doubt, the prosecution is laid in respect of specified identifiable and ascertainable sums, and not of a general deficit in the account which may or may not exist when the account is finally settled. To such a case the decision in 29 Cr.L.J.409 and 30 Cr.L.J.189 are applicable.

We think that we have dealt with all the points raised by the learned advocate for the appellant. After having bestowed our anxious care and attention on the various aspects of the case, so fully and ably presented before us, we have come to the conclusion that the lower court was right in convicting the appellant of the offence with which he is charged.

Now coming to the question of sentence, it seems to us that this is a fit case in which justice must be tempered with mercy. Mr.Sitharamachar held a fairly high position in Government Service before he took to the Industrial line. He is a graduate in Arts and Engineering. He was fired with enthusiasm for the industrial development of the State and his one ambition in life was to make Mysore industrially great. He was the life and soul of the three concerns -- the Mysore Development Syndicate, the Essenflours and the Asbestos -- floated mainly through his efforts. It was he that was directing controlling and managing all the business in which these concerns were engaged. It was through his endeavours that the products of the Essenflours attained a European reputation and this pioneer industry was pushed beyond the experimental stage. Unfortunately, none of these concerns had any decent margin of working capital to draw upon, for carrying on the business on the scale on which they were conducted. From the commencement, as the Balance Sheets and Profit and Loss accounts indicated, these were losing concerns with little or no prospect of their ever becoming remunerative. Money was needed to keep them going, more money than the resources on himself or the other members of the Directorate could command. Moneys were borrowed, the debts went on accumulating, stocks were not readily marketable, the prices realised were not competitive and yet the hope that sooner or later these ventures would prove profitable was not abandoned. It was at this juncture that the sandal oil selling agency was secured. As Mr.Sitharamachar himself stated in one of his letters, the one bright spot in the horizon was the sandal oil business, and even there after meeting the commission payable to Messrs.Mavlanker and Co., there was very little margin left to the Essenflours. The situation was very distressing. Nevertheless

there was plenty of sandal oil money to handle, ~~xix~~ and with Mr.Mavlanker at the other end, it was not difficult to find temporary accommodation from sandal oil funds, to keep the other concerns going and to meet the insistent demands made on them for the repayment of the heavy loans they had contracted. He was therefore tempted to utilise the sandal oil proceeds. It was not his intention to cause wrongful loss to Government or wrongful gain to the concerns for ever. His aim was to replace the moneys as early as he could; but he found himself in deep waters, and with the resources he could command he was quite unable to float again. He made passionate appeals to his friend and associate Mr.Mavlanker for help, but as the latter himself had misused Government moneys for his own business to a larger extent than ~~hhe~~ essenflours, with no liquid assets of his own which he could easily convert into cash, he was unable to render any kind of help. The various questionable ways and means which Mr.Sitharama Sarma had recourse to were aimed at concealing the real sorry state of affairs in order to enable him to gain time, in the hope that he might still be able to stave off the disaster; but ~~xxxxxx~~ it was too late. The offence is no doubt grave, but this is an aspect of the matter which ~~we~~ we cannot omit to take into consideration. We agree with the lower court that the misappropriated amounts were used not for his personal benefit but for the benefit of the concerns he was manaaging. His pecuniary interests in those concerns were not more than the pecuniary interests of his fellow directors, except in the matter of the allowances he was getting for actively managing the concerns under his charge. We do not share the view that for the purpose of ensuring regular payments of these allowances he was tempted to commit the acts of misappropriation he is charged with. To a man of his

position and social status the brand of conviction is in itself sufficiently punitive, and it is not the length or the severity of the punishment that should materially count. Moreover, he was in custody as an under-trial prisoner from the beginning of March 1929 until he was convicted on the 16th of September last. He was not let on bail either in the trial Court or here. Taking all the circumstances into consideration, we think a sentence of one year's rigorous imprisonment will amply meet the ends of justice, and we order accordingly. The sentence of fine will hold good. With the above modification, this appeal is dismissed.

Sd/- C.S.Doraswami Iyer,
Chief Judge.

Sd/- G.Srinivasa Iyer,
Judge.

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